



3 1761 09373447 3




CODE OF JEWISH  
JURISPRUDENCE

Parts V and VI





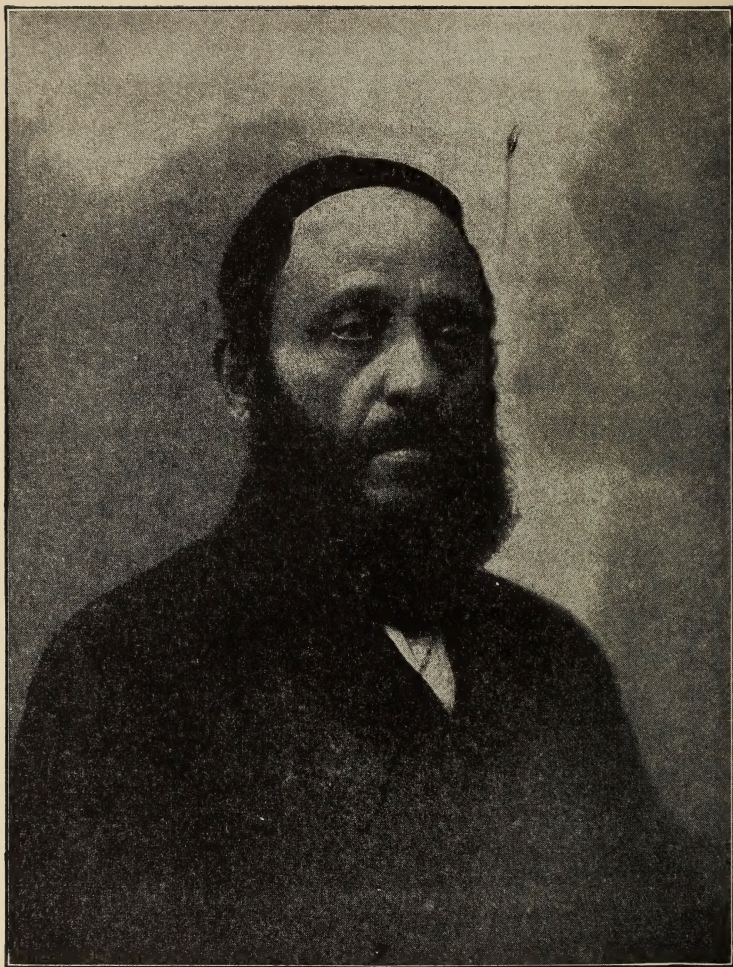


Digitized by the Internet Archive  
in 2014





**THIS LAW IS THE SOURCE OF ALL THE  
PRESENT LAWS WHICH ARE  
BASED UPON IT**



RABBI J. L. KADUSHIN  
15 Euclid Place, New Rochelle, N. Y.

חשן המשפט

# Code of Jewish Jurisprudence

TALMUDICAL LAW DECISIONS

CIVIL, CRIMINAL AND SOCIAL

By <sup>Jacob Louis</sup> **RABBI J. L. KADUSHIN**

TRANSLATOR OF THE JEWISH CODE

PARTS I, II, III, IV, V AND VI

אורים ותומים

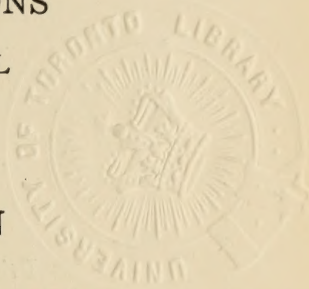
SECOND EDITION

PART V

**THE JEWISH JURISPRUDENCE CO.**

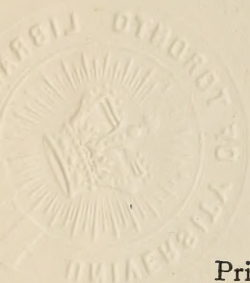
**New York**

246 955  
2/10/30





Copyrighted in U. S. and foreign countries in  
1921 by the author, Rabbi Jacob L. Kadushin, New  
York.



Printed in the United States of America.

Printed by Van Rees Press.  
Bound by H. Wolff Estate,  
518 West 26th Street,  
New York City.

## PREFACE

I praise the Lord for keeping me alive and in good health to be able to translate for you, the Lord's children, Lover of the Code of Jurisprudence, a continuation to the Parts I, II, III and IV of the Talmudical Law Decisions, the last two parts containing the subjects, Taking Title of Personal and Real Property, Neighbor Damages, Partner Dividing, Border Neighbor, Partnership, Agent, Buying and Selling, Business Fraud, Gifts, of Health and Sick Persons, Lost and Found, Unload and Reload, Abandoned, which were collected by the great learned Rabbi, Joseph Karro, over a hundred years ago from the Talmud, Alfassi Goennimand Maimonides under the name Choshen Mishpot for remembrance of the instruments of justice borne by Aaron, the High Priest, being also the chief of Judges, and the Lord which blessed Aaron shall bless the dear reader of the Holy Book.

I therefore find it my duty to publish the sacred edition to teach the world the justice of the Torah. As example to treat good the working man and pay his wages at the proper time and he shall not waste the time of the employer and he shall do his best for the work, and it is forbidden to muzzle the ox at the time he is threshing (see Code 6, Chap. 338) and even to pity a criminal as a thief of sheep when he slaughtered or sold her he must pay when he is caught four sheep for one and five in case of an ox, because he has trouble to carry the shep when he stole on his shoulder but the ox walk with his feet. See Code 6\*, Cap. 348.

And the Talmud said B. B. 58, if a judge is summoned to the Court even for a civil action and a judgment was rendered against him he must resign from his office because if he has no brains to understand his unjust how can he try another.

I hope that the dear reader will recognize the great value of the holy edition. Education is never too late and never enough. The more you learn the more you must learn, and he that claims that he knows everything knows nothing.

I hope you will honor your father the Lord and his law and you will purchase the book as before and even with more honor and respect.

Even though the law was created so long ago it is as effective now, because this law is the source of all the present laws which are based upon it, and it is a great use for the jurisprudence to find a decision for every doubt in law and even not so exactly you may find an example, and by purchasing the book you may be blessed by the Lord as the man (Oved Adam) which received the great blessing account the remaining of the Ark of the Toroh in his premises, Samuel 2, Chap. 6.

I wish that the world shall be filled with knowledge, peace and harmony and justice and evil shall go away this shall be in a short time in our days. Amen.

The Author.

### **Talmudical Sayings**

1. Truth, justice and peace shall always be strictly observed.
2. Sit before the oldest educated and listen to their advice.
3. Listen to the words of your comrade, you shall not be in a hurry to answer, think all you say, but don't say all you think.
4. Answer the first, first and the last, last.
5. Always admit the truth.
6. To a greater educated than yourself you shall not start to give your opinion except he asks you.
7. To one who wants to teach you not say of anything you have not learned that you have learned it.



8. If you are asked even a small question in law you shall not be ashamed to say you do not know.
9. If you don't understand don't be ashamed to ask.
10. You shall love the Torah and honor it.
11. You shall love correction and understanding.
12. You shall not fly after honor.
13. You shall know, either today or tomorrow, everything that belongs to you will not belong to you after you are dead, what for you shall covet anything which does not belong to you.
14. If you wish to receive love from your comrade you must do for his favor.
15. If you wish to avoid a crime, remember the end for it.
16. If you do a large favor for your comrade, figure that it is small; if he does even a small favor for you figure that it is large.
17. Who fulfills the Torah even at the time when he is poor he will fulfill the Torah at the time when he will be rich, and when he neglects the Torah in the time when he is rich he will in the end neglect the same account poverty.
18. When a man dies neither silver nor gold nor precious stones nor pearls accompany him but only the Torah and the good works accompany and watch him in his grave.
19. Better is an allowance of herbs when love is there than a stall fed ox and hatred therewith. Proverbs 15, 17.
20. He that tilleth his ground will be satisfied with bread but he that runneth after idle persons is void of sense. Proverbs 12.
21. The hardest work is to be idle.
22. The fear of the Lord increaseth man's days, but the years of the wicked will be shortened. Proverbs 1, 27.

23. Do not correct a scorner because he will hate you. Reprove a wise man and he will love thee. L. C. 9.
24. Hear ye children the correction of your parents and attend to know understanding. L. C. 4, 1.
25. Be not wise in thine own eyes, fear the Lord and depart from evil. L. C. 3, 7.
26. Withhold not a favor from whom deserving it when it is in the power of thy hand to do it.
27. If you intend to study when you have time, you will never have time to study.
28. The thing that is forbidden to do in public do not do in secret.
29. Feed your soul with learning as like you feed your body with bread.
30. Don't praise yourself, let others praise you.
31. A good name is often better than riches.
32. He is wise who learns from all men and he is honored who honors others.

### **Key to Abbreviations Used in This Book**

The Talmud is divided into twenty-four books and each one bears a different name and different subjects, prayer, religious, commercial, criminal law and domestic relations. After each law I give the name of the Talmud Book from which the law is taken. For example: B. B. or B. M. or B. K. that is all names of the Talmud Books. The word Migy is kind of evidence: When a litigant make one plea and he can make a better plea he is believed on the first one because if he wants to say a lie he can also say a better one. The word "kinion" often used, See Ruth 6, which was in the olden time as a settlement of a transaction. The word "hises" is an oath which the defendant is not liable account the law of the Torah, but he is liable on account of the Rabinnical enactment.

I ask a great favor from the dear readers that everything they not understand they shall ask the better educated, because who is wise who learns from all men, and who is honored who honors others.

# TABLE OF CONTENTS

## and INDEX

### PART 5

#### Chapter 133

SECTION		PAGE
1	Possession of Personal Property.....	80
9	Articles Which it is Accustomed to Rent or to Lend.....	803
	Chapter 134	
1	A Working Man Claims an Article he Received to Repair that he bought it.....	804
5	The son of a working man.....	805
	Chapter 135	
1	Possession of live cattle.....	806
	Chapter 136	
1	A Gave a coat to B and B returns a different coat.....	806
2	A and B are invited to a wedding.....	807
	Wash misplaced in a laundry.....	
	Chapter 137	
1	A went to B's field and gathered up the produce.....	807
	Chapter 138	
1	A and B found a coat.....	808
3	A and B each claims that the roofs belongs to them.....	808
8	A snatched the article from B.....	809
	Chapter 139	
1	A and B each claim that the cargo belongs to him.....	810
3	Land is in the possession of the proper owner.....	811
4	A claims a field and B brings witness that he is a rela- tive of the deceased.....	811
	Chapter 140	
1	Possession of Real Property.....	812
5	B claims that he has a bill of sale.....	
7	B produces a bill of sale and it is found that it is false....	813
11	The tenants may act as witnesses.....	814
	Chapter 141	
1	The possession must be for the full period of time.....	814
3	A custom in the locality to plant one year and skip next year .....	814
	Chapter 142	
1	The possessor produces witnesses that the plaintiff helped to raise a box of fruit on his shoulder.....	815
	Chapter 143	
1	A takes possession in B's absence.....	815
	Chapter 144	
1	Two partners take possession for six years alternately....	816



## II

SECTION		PAGE
	<b>Chapter 145</b>	
1	Two witnesses against each other as to the sort of fruit planted .....	817
4	When a possessor is bound to return the fruit or the value thereof and the same is uncertain.....	818
	<b>Chapter 146</b>	
1	Protest may defeat the possession.....	819
4	The form of the protest.....	819
6	The protest may be written.....	820
7	The plaintiff sold the field.....	820
10	The possessor must have some claim.....	820
	<b>Chapter 147</b>	
1	A sold to B a field and C was a witness.....	821
2	C was a judge.....	822
4	B advises with C.....	822
	<b>Chapter 148</b>	
1	A going across the sea and the neighbors obstructed his road .....	822
	<b>Chapter 149</b>	
1	A has possession of B's field and B proves that A was his partner .....	823
3	A son supported at father's table.....	824
6	Father's possession of a field belongs to his daughter....	824
10	Possession of dumb, or insane or minor persons.....	825
13	Guardian's possession in a field belongs to orphan.....	825
	<b>Chapter 150</b>	
1	A possession in field which has come to him before as pledge .....	826
	<b>Chapter 151</b>	
1	All those which they possess is illegal and they produce a deed .....	826
	<b>Chapter 152</b>	
1	All whose possession cannot be taken as evidence' and they die, the heirs possession of it is legal.....	827
	<b>Chapter 153</b>	
1	The law of neighbors damages.....	830
	<b>Chapter 154</b>	
3	A stretched a pole and B was silent.....	830
7	A stretched a Leader in B's yard.....	831
8	B wishes to close the leader.....	831
14	A and B partners in one wall.....	832
18	The beam was built in a tent for the holiday.....	833
	<b>Chapter 155</b>	
1	Possession of windows and doors.....	833
4	A partner brings to his house more families.....	833
11	A opens a window in the yard of B and B releases him	835
15	A sells a house to B and the yard to C at one time.....	836
	<b>Chapter 156</b>	
1	A and B partners in one house.....	836
7	A digs a well in his field and sold a half of the field to B .....	837
11	A has a fig tree and the branches hanging over the roof belongs to B.....	838
14	A has a house and it was damaged and through those damages occurred damage to B.....	839

### III

SECTION		PAGE
	Chapter 156	
1	One tenant wishes to open a store.....	839
7	One opens a doctor's office and another wishes to open the same .....	840
	Chapter 157	
1	Partner in real property.....	841
	Chapter 158	
1	Two are partners in one garden.....	843
3	A has a field between the three fields of B.....	843
	Chapter 159	
1	Two houses and roofs adjoin each other.....	844
	Chapter 160	
1	A has a roof near the yard of B.....	845
4	Two yards one is lower than the other.....	845
	Chapter 161	
1	The citizens can force each other for the necessary expenses .....	846
6	Five yards which all pour the water in one pipe.....	847
	Chapter 162	
1	The members of an alley may force each other.....	847
3	One wishes to open a door in a closed alley.....	848
9	Five yards open to a closed alley.....	849
	Chapter 163	
1	The citizens of each city forced to build a synagogue....	849
4	Necessary expense for protection.....	850
5	The expense of digging a well may be collected even from an orphan.....	851
	Chapter 164	
1	A and B partners in one house.....	851
2	The house falls down.....	851
	Chapter 165	
1	A builds an excavation in a mountain.....	853
	Chapter 166	
1	A had a wall by the garden of B.....	853
	Chapter 167	
1	Two gardens are situated one higher than the other.....	854
	Chapter 168	
1	A river overflows and storms the olive trees of A and deposits it in the field of B.....	854
2	A sold his tree for the use of wood and they produced olives .....	855
	Chapter 169	
1	A has a well inside of the house of B.....	855
	Chapter 170	
1	Five gardens watered from one well.....	856
	Chapter 171	
1	A bought of B half of B's field.....	856
2	The portion for dividing.....	857
6	A says to B buy my share or I will buy your share.....	857
9	One partner has two-thirds and the other one-third.....	859
14	Two articles have a different use.....	860
18	Two brothers inherit two big houses.....	861

# IV

20	If a guardian may say or buy the portion of the orphan	862
	Chapter 172	
1	To each door must be given four yards.....	863
7	Chicken house not entitled to 4 yards.....	863
	Chapter 173	
2	Bible to be divided.....	864
4	Two brothers divide the estate.....	864
7	One brother says Give me the bad side.....	865
10	Two partners buy one field. To one belongs one-third and to one two-thirds.....	865
	Page 866-867 Talmudical Language.	
	Introduction of the Law of Border Neighbor.....	868
	Chapter 175	
1	Law of Border Neighbor.....	869
SECTION		PAGE
3	One sells his field through an agent.....	869
7	Buyer improves the field.....	870
9	Buyer eats the fruit of the field.....	870
11	Buyer pays to the field 100 zus and it is worth 200 zus....	870
12	Buyer receives the field on credit.....	871
17	The partner is considered as compensation garden.....	883
19	The field has many border neighbors.....	872
24	The field was sold to two buyers.....	873
25	The border neighbor sold his field.....	873
36	The border neighbor releases his right.....	875
44	The robber wishes to return the money to the buyer.....	876
50	When the ground belongs to one and the building be- longs to another.....	877
52	The right of border neighbor to personal property.....	878
55	One pledges his eld.....	879
58	One leases a house for a certain time.....	879
62	A rents the first floor to B and the store to C.....	880
	Chapter 176	
1	One partner is appointed by government as director.....	891
6	Two laborers decide to be partners.....	881
10	Three partners invest a certain sum.....	882
17	The field was sold on condition.....	872
20	Partner violates the order of the other.....	884
24	One partner wishes to keep the fruit.....	885
29	Partnership for a certain time.....	886
31	One partner dies.....	886
32	One partner becomes ill.....	887
34	One partner sells the merchandise on credit.....	887
38	One acts as manager for a certain time.....	888
39	Two partners have a claim against another.....	888
42	A community buys the five scrolls of law.....	889
46	A partner becomes arrested.....	890
	Chapter 177	
1	Partnership law .....	880
3	One of the partners becomes ill by his negligence.....	891
7	A commands B his partner to commit a crime.....	892



# V

SECTION		PAGE
	Chapter 178	
1	One partner desires to release the tax.....	892
2	One partner does work in the partnership field.....	893
	Chapter 179	
	An article which is well known belongs to the partnership .....	893
	Chapter 180	
	Two partners possessed one yard and each make a vow .....	
	Chapter 181	
1	A company of travelers go in the wilderness.....	894
4	One hires laborer to save robbery.....	895
	Chapter 182	
1	Agent Law .....	895
	Crime mission .....	
2	The agent not knowing that it is a crime.....	895
6	The agent violates the commands of the sender.....	896
11	The agent defrauds the buyer.....	897
14	The agent was commanded to sell to one buyer and he sells to two.....	897
16	Agent appointed and the vendor made a condition.....	898
	Chapter 183	
2	Agent was appointed to buy merchandise and he buys same for himself.....	898
6	The agent was ordered to buy wheat and he bought barley .....	899
7	The vendor added to the certain count.....	899
8	A gives to his lawyer to settle with his creditors.....	899
	Chapter 184	
1	Three men give money to agent.....	900
3	Demand a second deed in his name.....	900
	Chapter 185	
1	Broker Law .....	901
8	A has a house for sale and the broker recommends a buyer .....	902
13	Marriage proposer.....	903
	Chapter 186	
1	Goods on approval.....	904
2	Goods on memorandum.....	904
	Chapter 187	
1	Agent claims that an accident happened.....	905
2	Wine gets sour.....	905
	Chapter 188	
3	A man sends his minor son to a store.....	906
6	An agent sustains damages.....	907
	Chapter 189	
1	The Law of Buying and Selling.....	907
	Chapter 190	
1	A gives money to B and the field will confirm to C.....	908
9	The vendor is anxious for money.....	909
15	A sold an ox to B.....	910
16	A claims that an error was made in counting the money .....	910

# VI

SECTION		PAGE
	Chapter 191	
1	Settlement with a note.....	911
	Chapter 192	
1	Possession of real property.....	912
4	Buyer bought ten fields in ten countries.....	912
6	A part was as sale and a part as hired.....	913
	Chapter 193	
1	Settlement uncut fruit.....	913
	Chapter 194	
1	A sold a field to Heathen.....	913
	Chapter 195	
1	Form of Agreement (Chlipin).....	913
5	A transaction on condition shall effect after 30 days.....	914
	Chapter 196	
1	The settlement of a Heathen servant.....	916
	Chapter 197	
1	The settlement of cattle.....	917
4	A sold to B a flock of sheep.....	917
6	A sold to B an unbound book.....	918
	Chapter 198	
1	The settlement of the Torah Law.....	918
6	The house which the bargain is lying is hired to the buyer .....	919
8	A pays for the article and B retracts and the money is lost .....	920
	Chapter 199	
1	A time when with money alone the vendee may become title .....	920
	Chapter 200	
1	The personal property lying in the yard belongs to the buyer .....	922
8	A takes a vessel for approval.....	923
	Chapter 201	
1	Settlement by putting the seal.....	924
2	Settlement by hand shakes.....	924
	Chapter 202	
	Settleemnt of personal property with the same settle- ment of real.....	924
	Chapter 203	
2	Promises may not be settled by form of agreement.....	925
4	A exchanges an ass for a cow and sheep.....	926
	Chapter 204	
1	The retractor must receive the cursing.....	927
3	A receives the money for a bargain and attach it for debt .....	927
	Chapter 205	
1	Transaction by force.....	928
3	The law of a notification.....	928
	Chapter 206	
1	Written option .....	930
	Chapter 207	
1	Conditional transactions .....	931
7	Conditional promises .....	933
SECTION		PAGE

# VII

SECTION		PAGE
13	Cards players .....	935
	Chapter 208	
1	Transaction by forbidden command.....	936
	Chapter 209	
1	Transaction by uncertain weight.....	936
4	Article which does not exist in the world.....	936
11	A sold the tree to B, and the fruit to C.....	938
	Chapter 210	
1	Transaction to unborn child.....	938
	Chapter 211	
1	Article which is not in the possession of the giver.....	939
4	A sold the father's articles and he died before the father	939
6	Father made a will that a field shall belong to his son	
	after he died.....	940
7	A gives a gift and included among it Denarim.....	940
8	A has articles in B's possession.....	941
9	A has a loan by B.....	941
	Chapter 212	
1	The bargain must be animate.....	941
2	A sold to B the air of his shanty.....	941
4	A sale for a certain time.....	942
	Chapter 213	
1	A sold to B the fruit of his apiary or his bee hive.....	943
	Chapter 214	
1	A sold a house to B and was not specified about the	
	other convenience .....	943
4	In a deed is not written from the depth of the ground	
	to the heaven.....	944
12	A has two houses front and rear.....	946
	Chapter 215	
1	A sold a yard and was not mentioned about the building	
	Chapter 216	
1	A sold a field and left a certain fig tree for himself.....	948
	Chapter 217	
1	A sold a place to build a fountain.....	949
5	A sold a place to make a tomb.....	950
	Chapter 218	
1	A sold to B the length of a town of seed.....	950
	Chapter 219	
	The borders are not necessary to mark in the deed.....	951
	Chapter 220	
1	A sold a cargo to B.....	952
2	A carriage and asses.....	952
4	Yoke and oxen.....	953
7	Pigeons and nest, bees and bee hive.....	953
	Chapter 221	
1	The vendor asks 200 zus and the buyer offers 100 zus....	954
	Chapter 222	
1	Two claimed one bargain.....	954
	Chapter 223	
1	A exchanges a cow for an ass.....	956



# VIII

	Chapter 224	
2	A exchanges a horse for wine.....	957
	Chapter 225	
4	One hires mariners to transfer poppies seeds.....	958
	Chapter 226	
1	A sold a field and left a certain fig tree for himself.....	948
5	A transaction was searched and a claim is found.....	960
	Pages 961 and 962 Talmudical Expressions.....	961-962
	Chapter 227	
1	Business Fraud .....	963
11	Merchant sells cheap account anxiety.....	965
	Chapter 228	
14	A fraud in a bargain and same increases in price.....	965
17	A sold an article bulk sum.....	967
20	The release of the fraud amount must be definite.....	967
23	Owner sells his articles.....	968
27	Fraud in a transaction of real.....	969
29	Overcharge by rent.....	970
31	A hires B with his ass.....	970
32	A hires B to plant a field.....	970
34	A job laborer.....	970
35	Appoint an agent for the distribution.....	971
37	Brothers divide an estate on condition.....	972
	Chapter 228	
1	Fraud with words.....	972
12	A store keeper may distribute.....	975
	Chapter 229	
1	A sold to B six gallons of wheat.....	975
	Chapter 230	
1	A said to B the cellar of wine I sell to you.....	976
5	A sold to B wine and B put in his barrels.....	976
9	A received a barrel of wine in commission.....	977
	Chapter 231	
2	The duty of the Court.....	978
4	The minimum of dry measure.....	978
6	The minimum of wet measure.....	978
14	Hold fruit in cold storage and great profiteering.....	980
16	Labor strikes .....	980
17	Ruler appointed in the country.....	980
	Chapter 232	
1	A sold to B a bargain by measure.....	981
2	A received money and finds more.....	981
9	A sold a cow and was in it many defects.....	983
13	A sold a servant and it is found that he is an armed robber .....	984
18	A bought a bed spread and cut it.....	985
20	A sold cheese and after three days it is found rotten.....	986
21	A sold a closed pitcher with oil.....	986
23	As old an ox without teeth.....	987
27	A sold a gorer ox.....	989
	Chapter 233	
1	A sold one kind of fruit and gives another.....	990
4	A sold meat of male sheep.....	990

## IX

### Chapter 234

1	A sold meat and it is found that it is forbidden to eat....	991
---	---	-----

### Chapter 235

1	A minor under six years.....	992
8	A minor bought real property.....	994
15	A sold real property and dies and relative wishes to examine the body.....	996
17	A minor borrowed money.....	996
23	Epileptic transaction .....	997
27	Deal closed on holiday.....	998

### Chapter 236

1	A heathen threatens with killing.....	998
5	A government confiscated a house.....	999

### Chapter 237

1	One trying to buy an article and another bought the same .....	1000
---	---	------

### Chapter 238

1	A deed to write to the vendor in the absence of the vendee .....	1001
3	The expenses of the deed who must pay.....	1001
5	When in a deed is not written the amount of the bargain	1002

### Chapter 239

1	A claims that he lost his deed.....	1002
---	-------------------------------------	------

### Chapter 240

1	Two deeds written of one field.....	1002
---	-------------------------------------	------

### Chapter 241

#### Law of Gift

2	A settlement not in presence of witness.....	
6	A release for an indefinite sum.....	1004
8	A gift for a certain purpose.....	1005
10	A gift on condition and the giver dies.....	1006
14	A gift on condition who must prove that is done.....	1006
15	A has two sons.....	1007

### Chapter 242

1	A gift by force or duress.....	1007
2	The form of the notification.....	1007
5	A will may be announced after the deed of the giver.....	1008
8	A secret gift.....	1009

### Chapter 243

1	A gift through another person.....	1009
6	A heathen appoints an agent.....	1010
12	The Court yard may act as agent.....	1011
16	The yard of female minor.....	1012
17	A threw a pocket money in B's yard and the same passes to the street.....	1012

### Chapter 244

1	A command by words if it can be delivered to an agent	1013
---	---	------

### Chapter 245

1	Promises in a written note.....	1013
5	B's a debtor and wishes to collect from the gift and B says that he is a guard.....	1014

### Chapter 246

1	A gift must be managed the idea of the giver.....	1016
---	---	------

SECTION		PAGE
5	A gift to a son considered as appointment as guardian	1017
13	A said to B eat with me.....	1019
	Chapter 247	
1	A sends from abroad the sea articles.....	1019
	Chapter 248	
1	A sick person gives his fortune to B and after he dies it shall belong to C and B sold the same.....	1021
4	When C dies before B.....	1022
10	A gives a gift to B and after B dies shall belong to C from now .....	1023
12	A gives a gift for a certain length of time.....	1023
20	A gives his fortune to B and therein was notes.....	1025
	Chapter 249	
1	Promises for a small gift.....	1026
	Chapter 250	
1	The gift of a sick person.....	1026
2	A sick person appoints a guardian to divide the fortune	1027
10	A sick person gives a part of his fortune as gift.....	1028
14	The sick gives gift because he thinks he will die.....	1029
15	One takes a sea voyage.....	1029
20	The sick gives all his fortune and withdraws a part of it	1031
	Chapter 251	
1	In a sick person's gift deed is written that is given either in his life.....	1033
4	The giver recovers and wishes to withdraw.....	1034
	Chapter 252	
1	A sick person gives gifts and an obligation of support widow is of him.....	1034
4	A swore that he will give to B a gift and he dies.....	1035
	Chapter 253	
4	A sick gives a certain amount gifts and the estate is insufficient .....	1036
1	Two men visit a sick during the day.....	1035
2	A sick gives his fortune because he thought that his son dies .....	1036
8	A sick man commands that 200 zus from his wine shall be given to B and the wine becomes sour.....	1037
10	A house the size of 100 barrels as a gift.....	1038
15	A date tree to give to B and in the estate was two half date trees .....	1039
21	A command if a male will be born shall recur two thirds	1040
26	A command that the fortune shall given to C's sons were not born.....	1041
	Chapter 254	
1	A sick requests that a form of agreement shall be done by his transaction.	
	Chapter 255	
1	A sick man said that he have 100 zus by B.....	1042
4	Bequeaths for holy purposes.....	1043
10	A commands to give 100 zus and the heirs sold the estate .....	1044
13	Evidence by dream.....	1045



# XI

SECTION		PAGE
	<b>Chapter 256</b>	
1	A sick person admitted that a certain sum belongs to B	1045
	<b>Chapter 257</b>	
1	A father made a will that the field belongs to his son after his death.....	1046
9	Advice to divide a fortune after death and to avoid quarrel among the heirs.....	1047
	<b>Chapter 258</b>	
1	In a gift deed is written that the field shall belong to B after his death.....	1048
	<b>Chapter 259</b>	
	The Law of Loss and Found	
6	An overflow starts to flow over a field.....	1050
	<b>Chapter 260</b>	
1	A finds an article in a pile.....	1050
4	When A finds figs in a road.....	150
	<b>Chapter 261</b>	
1	When an ass or a cow is feeding by the road.....	1053
	<b>Chapter 262</b>	
1	Article must be the value of one peruta.....	1054
16	A finds a fig cake and inside a piece of vessel.....	1058
	<b>Chapter 263</b>	
1	Honorable man finds a sack or a big basket.....	1060
	<b>Chapter 264</b>	
	His loss and the loss of other who is precedence.....	1060
	<b>Chapter 265</b>	
1	The founder disturbs his work account the loss.....	1063
	<b>Chapter 266</b>	
1	A makes a vow of no benefit from B.....	
1	The finder must return the loss in a safe place.....	1064
	<b>Chapter 267</b>	
17	The finder must take care of the loss.....	1067
	<b>Chapter 268</b>	
1	Title with seeing.....	1069
2	Title with four yards.....	1069
5	A merchant bought a bargain.....	1070
6	A deer crippled.....	1071
	<b>Chapter 269</b>	
1	A raises up an article for B.....	1071
	<b>Chapter 270</b>	
1	A deaf insane minor.....	1072
	<b>Chapter 271</b>	
1	Two persons see a lost camel.....	1073
	<b>Chapter 272</b>	
1	Unload and reload.....	1074
11	Two expressmen driving in narrow road.....	1076
15	Ass or sheep owners insure a loss.....	1077
16	One carry a load iron and one silver.....	
	<b>Chapter 273</b>	
1	Law of abandonment.....	1078
6	The wilderness and the seas.....	1079
	<b>Chapter 274</b>	
1	Joshua divided the land.....	1080

## XII

SECTION	Chapter 275	PAGE
1	The taken title must be intentional.....	1081
	<b>From Chapter 275 to Chapter 307, See Code III. Page 251.</b>	
	Chapter 307	
1	A hires a cow, or vessel.....	1090
	Chapter 308	
1	A hires a horse to ride a male.....	1992
	Chapter 309	
	A hired an ass to lead her up a mountain.....	
	Chapter 310	
1	A hired an ass for a journey and she became sick.....	1095
	Chapter 311	
1	A hired a sheep and he added 1/30.....	1097
	Chapter 312	
1	A leases a house for certain time.....	1099
5	The time of the notification.....	1099
19	One rented a house by the year and it was leap.....	1102
	Chapter 313	
1	The right to use the convenience.....	1104
	Chapter 314	
1	Who is bound to do the small repairs.....	1104
	Chapter 315	
2	A condition by rent.....	1105
	Chapter 316	
1	A lease if it is permitted to transfer.....	1106
	Chapter 317	
1	The tenant claims that he paid the rent.....	1106
	Chapter 318	
1	A hired a mill.....	1108
	Chapter 319	
1	A deceived B.....	1108
	Chapter 320	
	The law of land cultivator.....	
	Chapter 321	
1	A field which depends upon irrigation.....	1110
	Chapter 322	
1	The fruit is eaten by locusts.....	1111
	Chapter 323	
1	A leases a field for ten ton weight.....	1112
	Chapter 324	
1	A leases a field to sow barley.....	1113
	Chapter 325	
1	A lessee is forbidden to sow flax.....	1113
	Chapter 326	
1	A leases a field to sow poppy seeds.....	1114
	Chapter 327	
1	The land cultivator wishes to resign.....	1114
	Chapter 328	
1	A field not productive.....	1115
	Chapter 329	
1	The land cultivator dies.....	1115
	Chapter 330	
	A was hired to plant 100 trees.....	1115

## CHAPTER 133.

## חוקת מטלטלים

## LAW POSSESSION OF PERSONAL PROPERTY.

1. A holds an article in his hand or in his possession and B claims it and he brings witness that the article belongs to him, and A answered that B gave him the article as a gift or sold it to him, and B claims that he loaned the article to A. A is in the right because it is sure that anything which is in a man's possession is considered his, and the recoverer must appear with witness to prove his innocence, and A must take an oath (Hises), and he is free (B. B. 45; B. K. 46).

2. If A pleads that the article in his possession is a pledge for a loan he is believed to demand the value of the article with an oath, by holding a holy object in his hand (L. C.).

3. If A claims that B is indebted to him from a business transaction then the Court must direct A to explain for what business he owes because through a good explanation the truth can be reached and because he can think sometimes that he owned him but later it can be found he has made a mistake (Tur).

4. Even if B delivered the article to A, in the presence of witness if there is no witness just now that the article is in A's hand, and A pleads that he bought the article, he is believed on account of migy,



because he can say that he returned the article, therefore he is believed with the plea that he bought it (B. B. 45).

5. Even if B notifies A that he shall not return the article to him only in the presence of witness and A says that he returned the article to B without witness, he is believed, account of migy, because he can say that an accident happened to the article, but A must take an Torah oath (L. C.).

6. If A pleads that he returned the article to B in the presence of so and so and they died or they went over the sea, A must take an oath (Hises) and is free (Tur).

7. If the article was not delivered to A in the presence of witness even if witness see it just now in his hand, A is believed when he says that he bought the article. If, however, it was delivered in the presence of witness and just now the article was seen in his hand he is not believed to say that he bought it. When the witness testified that the article was delivered to him as bailment, if however the witness testified the article was delivered without specifying for which purpose he is believed when he says that he bought the article or received it as a gift (Tur).

8. If B says to A why have you my article in you possession and, A answered you sold it to me or gave it to me as a gift, and B says I gave the article to C and I notified him not to return it to me except in the

presence of a witness, and he did not return it to me, and he gave it to you without my permission, then A must swear that B sold the article or gave it to him as a gift, and he is free (Tur).

9. This rule applies only to such articles that it is not a custom to rent or lend them. If however the article is such kind which it is accustomed to rent or to lend and B has witness that it is his, and they see the article in the hands of A and B says that he loaned it or rented it to A, even if there is no witness which way it has come to him A is not believed when he says that he bought it or the article is a pledge, and he must return the article to B. Even if the article was in his hand three years and even if A died and left the article to his heirs the Court can recover from the heirs, if B needs to take an oath. There are two opinions B. M. 116).

10. If A's heirs plead surely that in their presence B gave or sold to our father the article then B must take oath (Hises) and he is free (Tur).

11. If A has in his hand articles which it is accustomed to lend or rent them and B claims that they were stolen from him and A says I know that it was yours but C sold me or gave it to me as a gift, the article cannot be recovered from A, even if B produces witness that it was his, because a man is accustomed to sell his articles. Another opinion stated that A is not believed (Mamanides).

12. If B pleaded that he rented or loaned the article to A then the article must be recovered from A. If the articles are of such kind which is not accustomed to rent or lend it, then A must take an oath (Hises) that B did not lend or rent it to him but he bought it from C and he can keep his article (Tur).

### CHAPTER 134.

#### A WORKING MAN CLAIMS THAT AN ARTICLE HE RECEIVED THROUGH HIS OCCUPATION. THAT HE BOUGHT IT.

1. If A is by occupation a tailor and has in his hand a coat belonging to B and he pleads that B sold or gave him as a gift the coat, and B claims that he gave him the coat to repair even if it was delivered not in the presence of witness and even if it is in his possession so many years B is believed and the coat must be recovered from the tailor but B must take an oath (Hises). If, however, the coat was not seen in the hands of A and B pleaded "I gave you a coat for repairs" and A says "I returned it to you and afterward you sold to me the coat or gave it to me as a gift, A must take an oath (Hises) and he is free, account of migy because he can say that he never received it (B. B. 45).

2. Even if the coat was delivered to A in the presence of witness he is believed, because he can say



that he returned it to B, therefore A must take an oath (Hises) and he is free, and the Court cannot force A to show the coat, if he show it himself then B can bring witness that it is his and he can recover the coat, even if it was not delivered in the presence of witness (Rambam).

3. If the coat is in the possession of C and he pleaded to B "in my presence you commanded to A the tailor to sell me your coat and I bought it" he is believed, account of migy, because he can say that you sold it to me. If however he says that A sold to him because he told him that B permitted him to sell it he is not believed.

4. If A stops from his occupation he is considered under the law as a man that does not work and he is believed, even if the coat was received into his hand when he was a working man. Another opinion stated that the coat must be in his hands afterward a long time which it is impossible for a man to leave his coat so long in a tailor's hands, then he is believed (B. B. 47).

5. The son of the workingman if he pleaded that he himself bought the coat of B he is believed, like any other man. If he pleaded that he inherited it from his father he is not believed. If he says that in his presence B admitted to his father that he bought it he is believed, because he can say that he himself bought it from B (L. C. 47).

## CHAPTER 135.

## POSSESSION OF LIVE CATTLE.

1. If B says to A "why is my sheep in your possession" and A says "I bought it or you gave me as gift" and B says "I didn't sell it or give it to you but it went into your yard itself or you caught it and took it in" and B brought witness that it is his, B must take an oath (Hises) and he can recover the sheep. If B has no witness that it is his sheep then A must take an oath (Hises) and he can keep the sheep (B. B. 36).

2. If it is the custom to deliver to the shepherd the sheep in the morning and to take her from his hand in the evening and she never goes itself, A is believed with an oath (Hises) that the sheep belonged to him as a gift or that he bought it, or if he pleads that the sheep is a pledge with him or she done damages he must take an oath holding a holy thing in his hand, and he is believed to claim according to the value of the sheep.

## CHAPTER 136.

1. A gave a coat to B the tailor for repairs and B returns a different coat saying "here is a coat." A has the right to use the coat until the owner of the coat demands same. If however, the wife or children of the tailor gave the wrong coat to A, or B gave the

coat to A saying "here is your coat," then A is forbidden to use it is understood it was given as a mistake (B. B. 46).

2. If A and B are invited to a wedding or to a funeral, and by mistake they exchange their coats, they are forbidden to use the wrong coats. If the owner of one coat recognizes his, it must be returned to him, even though he cannot locate his coat. If wash is misplaced in a laundry the same rule applies (Ramo).

## CHAPTER 137.

1. A went to B's field and gathered up some of his produce, and while in his possession B claimed that A robbed it; A however, claims, that he bought the fruit, A is believed with the oath (Hises) even though there are witnesses that he gathered it himself (B. B. 33).

2. If the owner of the field or tree is absent, and one says "I will go and gather the fruit from the field or tree belonging to B, because he sold it to me," the Court cannot prevent him. If the owner of the field or tree arrives before he gathers the fruit, the owner has the right to prevent him from gathering the fruit (L. C.).

If however, he claims that he bought the ground, and even though he takes possession of the fruit, he



is not believed, because he has no deed, has not possession for three years (L. C.).

3. A said "I will go and cut down B's tree which bears fruit because he sold it to me for cutting, the Court must prevent him because it is forbidden to cut down trees bearing fruit.

### CHAPTER 138.

1. A and B found a coat and they are holding the coat, or both are riding on the one horse, or one is riding and one is leading the horse, or both are sitting near a pile of wheat, which is in an alley, or in a yard belonging to the two, and each one claims that the whole belongs to him, each one must take an oath holding a holy thing in his hand that he has a share therein and the share is not less than half, then they must divide between themselves (B. M. 2).

2. If A says to B "swear that it is yours and then you can have it all," A must be heard. If B does not want to swear, then it must be divided without an oath.

3. If A and B each one claim that the whole roof belongs to him, the same rule applies (Ramo).

4. If A claims that the whole article belongs to him, and B claims that only a half belongs to him, A must take an oath holding a holy thing in his hand that he has a share therein and this share is not less than three-quarters and B must take an oath that he

has a share therein and the share is not less than one-quarter. A must receive from the article three-quarters and B one-quarter (B. M. 2).

5. This rule holds good when they both hold the ends of the article and neither of them holds three fingers wide of the article in his hand, then it must be divided equally even if the article on one side contained gold and the gold is nearer to one of them. The article must be divided lengthwise so that each shall have an equal share of both sides. If they are both holding the article in both hands each claims that the article belongs to him then each must receive how much he holds in his hands and the rest must be divided equally (L. C. 7).

6. If the article is such that it will be spoiled, if it is to be divided then it must be appraised according to its value and be sold, and divided the money.

7. If A holds the whole article and B tries to grapple it, the article belongs to A (L. C. 6).

8. If A and B keep the article and A snatched the article from B and B was silent, the whole article belongs to A even if B protests afterwards because since he was silent before, it is considered that he admits that the article belongs to A (L. C. 5).

9. If B resnatched the article afterwards of A, even if B protested at the beginning, the article must be divided as before. It is an opinion that B is not believed (except if he brings witnesses), because by

being silent he admitted that the article belongs to A (L. C.).

10. If A and B both come before the Court holding a coat in their hands and each claiming it and the Court decided that they shall divide it equally and they finally go out of the Court, and when they return the coat is in A's hand and he claims that B admitted to him that it is his, and B says that he hired it to him, or he snatched it from me, then B must produce evidence that it is so. If he cannot prove it, A must take an oath that it is his and he is free (L. C. 5).

## CHAPTER 139.

1. R and B each claim that the cargo belongs to him, and neither of them is in possession of the cargo, each one who can produce the better evidence or witness, or where it is stronger and seized the cargo, it belongs to him, until the other will bring evidence or witness. The seizer must take an oath that the cargo belongs to him, and so long that the other does not bring any evidence, it belongs to the seizer.

2. If a third party seizes the cargo from the two and he claims that it belongs to him, it belongs to him, because he has taken possession of it. If however, he seizes the cargo without claim that it belongs to him the cargo must be recovered from him, and it is an opinion that the seizer must return to each of the two



claimers the value of the cargo, because he did not know who is the right owner (L.C. 35).

3. If a claim is made concerning a field then the possession of the seizer cannot be considered as evidence because real property cannot be robbed and where the ground there is shown in possession of the right owner.

4. If A and B claim a field each one claiming that it belongs to him, and no one takes possession of it; *e. g.*, the owner of the field died and the two inheritors claimed that they are relatives to the deceased and it is no witness, to prove which one is more related to the deceased, if A is stronger and seized possession of the field the field belongs to him, and if afterwards B brings witness that he is a relative and the witness not knowing that A is related or not, the field must be recovered from A, because B is the positive relative and A is a relative in doubt. The same rule prevails if A brings witness that he is more related to the deceased than B.

When the field is recovered from B he must pay for the use of the fruit as much as he admitted that he used the fruit, even if there was no witnesses as to how much fruit he used (Tur).

## CHAPTER 140.

## חוקת קרקעות

## THE LAW OF TAKING POSSESSION OF REAL PROPERTY.

1. If a real property is well knowing that it belonged to R even only for one day and just now it is in possession of B, and he eat and uses the fruit of the real property and he claims that he bought it and he lost the Bill of Sale and R claimed that B robbed the field of him. R is believed with an oath (Hises) and he can have recover his property except when B has possession of the field a time of three years then B must take an oath (Hises) and he can stand by his field (B. B. 30).

2. If R have no witness that the real property had belonged to him then B is believed even before the expiration of three years.

3. If B claims that he has a Bill of Sale and R claims that the Bill of Sales is false or it was a trust note then the Bill of Sale must be acknowledged with his signatures (Tur; Kesuboth 19).

4. If it is impossible to acknowledge the signatures, the field must be taken away from B and returned to R (L. C.).

5. If B claims that he has a Bill of Sale that R sold or gave to him as gift and even he take possession of it the time of three years he must acknowledge his Bill of Sale. If he is unable to acknowledge the Bill

of Sale, *e. g.*, the witness died or they went across the sea and if there is no one who can recognize their signatures he can be believed with the proofs of taking possession three years, and B must take an oath (Hises) that he bought the field and he is believed (B. B. 169).

6. If however the witness is in existence then the defendant must prove the signature by the same witnesses.

7. If afterwards B pleads that he lost the Bill of Sale, he is not believed and the same rule applies if he produces the Bill of Sale and it is found that it is false, even if the possession of the three years cannot help him and the field must be returned to R (Tur).

8. If A gives a gift a field to B with witnesses and A takes possession afterwards of the field for the time of three years and he claims that the Bill of Sale which he gave to B is written by mistake, he is not believed because he contradicted the witnesses who signed the Bill of Sale (Rasbo).

9. The taking possession of the real property must be made by eating the fruit or by other uses, each kind according to his own use, for the time of three years (B. B. 28).

10. The taking possession of houses must be proved by witnesses that the possessor alone lives in the premises or he rented the same to others three years one after the other (L. C.).

11. The tenants of the house may act as witnesses that the possessor took possession of the house three years when they have not given the rent already and they say we will give the rent to the winner, if, however, they did give the rent to the possessor they cannot act as witnesses because if the plaintiff will win the house, they must give rent again to the plaintiff (L. C. 29).

### CHAPTER 141.

1. The three years of possession must be in full, shall not be short even one day. This law applies only to such field which is watered by a well, or houses, yards, stores, hotels or baths, which they can be used steadily. If however it is a field which is watered by rain or a field tree, then it is not necessary that the possessor shall be three years steady but even he eat three times fruit one of each year it is enough for evidence of possession (L. C. 28).

2. The three years of possession must be one after the other. If however he take possession one year and skip one year and take possession the third year and skip another year and take possession the fifth year and skips the sixth year, the possession cannot be taken under consideration (L. C. 29).

3. If it is a custom by the locality to plant the field one year and keep it vacant the next year, the field shall be fat and may produce more fruit, then



such possession can be taken under consideration (L. C.).

4. If in the same locality the possessor eat the fruit from the field three years each after the other without any rest, it is two opinions one stating that the possession is valid and one stating that it is void. (Tur).

### CHAPTER 142.

1. If the possessor produces witnesses that the plaintiff helped him to raise a box with fruit on his shoulder of the possessor to bring this to his home, this evidence can be taken under consideration and even if the possessor did not take possession of the field three years he is believed with an oath (Hises) that he bought the same (B. B. 35).

2. If the plaintiff pleads I sold to him the fruit of the field and therefore I helped him to raise his fruit but the ground I did not sold to him, he is believed. This rule applies only before the time of three years. If however after three years if the plaintiff pleaded that he sold to him only for the fruit he cannot be heard (L. C.).

### CHAPTER 143.

1. A takes possession three years in a real property belonging to B, and B is absent in another country, and it is in many sojourn and the owner can

be notified about the possession of his field and he did not protest all the three years, the possession is valid. If however it was a War time or such place where it is impossible for a sojourner to go from one place to another and B claims that he did not know of the possession, the possession is invalid (B. B. 30).

### CHAPTER 144.

1. If two partners take possession of one field six years, one eat the fruit of the field the first, third and fifth year, and the second eat the fruit the second, fourth and the sixth year, the possession is void for each one, because each one of them did not eat a year after the other. If however the partners made such agreement between each other that they shall use the fruit of the field in this manner the possession can be valid even for the first three years. The same rule applies if they pleaded that they bought the field of A and he made to them a Bill of Sale and they take possession three years it is valid (B. B. 29).

2. If one take possession one year and he sold the field to another and he take possession one year and he sold to a third and he take possession one year, if the sales were with a Bill of Sale the possession is valid. If it was without Bill of Sale the possession is void (L. C. 41).

3. If A takes possession of real property one year and he dies and the son inherits the property and he

takes possession two years, or the father takes possession two years and the son one year, or the father one year and the son one year and the buyer who bought from the son one year, the possession is valid, when the sale is made with a Bill of Sale (L. C. 47).

4. A takes possession of a real property in the presence of the father who was the owner of the field one year and he dies and the possessor takes possession of the field two years in the presence of the son or vice versa in the presence of the father two years and in the presence of the son one year, or in the presence of the father one year, in the presence of son one year and in the presence of the buyer which bought from the son one year, the possession is valid if the son sold the field among all fields which he inherited from his father because the possessor did not recognize that the field was sold and therefore he did not take care of his Bill of Sale. If however, this field was sold separately the sale can be considered as a protest and therefore the possession is void (L. C.).

## CHAPTER 145.

1. If two witnesses testify, one stating that the possessor planted the field with wheat and the second stating that he planted barley, the witnesses can be taken under consideration and cannot be contradicted on account it (B. B. 56).

2. If one witness states that the possessor ate the fruit of the field the first, third and fifth year, and the second states that he ate second, fourth and sixth year, the witnesses cannot be combined because on that year which one testified the other did not testify and the field and the fruit must be returned to the first owner (L. C. 57).

3. A takes possession of a field three years and B claims that A robbed the field and the Court commanded A to produce witnesses that he ate the fruit of the field three years and he found only witnesses for only two years, he must return the field and the fruit for the two years, but not for the third year because if the Court will believe A that he ate three years then even the fruit and the ground must not be returned to B (B. B. 33).

4. When a possessor is bound to return the fruit which he ate and it is uncertain the value and the Court cannot appraise the same, *e. g.*, like fruit from a field or tree, and the plaintiff cannot say positively what it is worth, therefore the defendant must pay how much he admitted and the Court must put a ban on them who ate more fruit and did not pay (Tur).

5. If possession is found void and the possessor must return the field to the owner, and the field was hired to another and the hirer is in existence, the hirer must pay again rent to the first owner, and the



hirer can demand his first rent from the possessor, because he hired him a place which did not belong to him and he took from him rent (B. B. 29).

## CHAPTER 146.

1. A protest can destroy the possession even if the protest is made in the absence of the possessor and even if he is in another country when sojourners go back and forth (B. B. 38).

2. The protest must be made in the presence of two witnesses, even if the witnesses are old or sickly, and they themselves cannot notify the possessor, it is valid, because they will say to the others and the others will say to the possessor (B. B. 38).

3. The protest must be made before two witnesses. If it is made in the presence of one witness and even if it is made in the presence of the possessor and he admitted the protest, the possession is valid, because the possessor can say that he did not protest, therefore he is believed to say that he bought the field. If one witness contradicts him it is two opinions if he is believed or not (L. C.).

4. The form of the protest. The plaintiff must say in the presence of two witnesses, so and so possesses my yard or my field he is a robber and tomorrow I will claim of him in court, or it is a pledge or rent to him, if he will claim that I sold to him I will claim in the Court of him (B. B. 39).

5. However he says that so and so who is in possession of my yard is a robber, this cannot be considered as a protest because the possessor can say when I heard these words I thought maybe he is slandering me only and therefore I did not take care of my Bill of Sale (L. C.).

6. The protest in the presence of the two witnesses can be written in a form note even if the plaintiff did not command to them to write in the form of a note, and if the protest is made the first year it is not necessary to protest every year, but it is necessary to make one protest every three years (L. C. 39).

7. This rule applies only by verbal protest. If however the plaintiff sold the field in the three years to another he need not protest again and the possessor must take care of his Bill of Sale forever (L. C. 42).

8. If a protest is made twice, if it is made in the same form, then the possession is invalid. If it is made in a different form then the possession is valid, because the plaintiff admitted in the other claim that the first claim is false, therefore the possessor is believed with his possession (B. B. 39).

9. If the possessor sold the field to another the plaintiff must not deliver the protest to the buyer but only to the possessor (L. C. 41).

10. The possessor must have some claim of the field which he possesses. If there is no claim, *e. g.*, the plaintiff requested what are you doing in my field

and the possessor answered I do not know to whom the field belongs and therefore I take possession of the field because nobody forbid me, therefore the possession is void, because he did not claim that he bought it or received it as a gift, therefore the plaintiff when he brought witnesses that the field belonged to him the field must be returned to him, and all the value of the fruit which he ate must be returned to the plaintiff (L. C. 42).

11. If the possessor produces witnesses that his vendor used the field even one day or he says that in his presence he bought the field from you, and afterwards he sold it to me, he is believed on account of migy because he can plead that he himself bought the field because he had possession three years (L. C.).

12. If after his pleading that I bought from so and so who said to me that he bought from you, he added that he bought from you in my presence he cannot be believed. If, however, he said first I bought from so and so without specifying and afterwards he added which he bought from you in my presence, he may be believed (Tur).

## CHAPTER 147.

1. A sold to B a field and C was one of the witnesses who signed the deed and afterwards C claimed of the same field that it is his and A robbed from him the same, C's claim is void, and even if he proves that

the field belonged to him he lost his right because A can say to him why were you a witness in that transaction for the sale of the field and afterwards you claimed that the field was yours (Kesuboth 109).

2. If C was a judge on the Bill of Sale under the acknowledgment of the witnesses, he can claim afterwards for the field because it is permitted for the judge to acknowledge a note even though not read the contents therein (L. C.).

3. If he was a judge in a trial where A was claiming about his field and he decided in favor of A, then the judge lost his right to claim to the field (Ramo).

4. If B comes to receive advice from C that he wishes to buy the field and C advises him to buy it, and B bought the same C afterwards may make a claim that the field is his, because he did not do anything, but only advised (B. B. 30).

5. It is an opinion if C denies the conversation which he had with B, and B proves with witnesses the conversation, C loses his right to claim the field (Rasbo).

## CHAPTER 148.

1. A while going across the sea, his neighbors obstructed the road to the fields, either the four fields which connected his four sides belonged to four different men, either the four men bought the four fields from one man, each one of them may claim per-



haps you path is mixed with the other not in min; therefore A must buy a path or he shall fly in the air (Keshuboth 109).

2. The same rule applies if the four fields belonged to one man which he bought from four men, because he can say if I return my Bill of Sale to each of my vendors you cannot demand the road from the vendors, and I bought from them their rights. If however the four fields had belonged to one man and he is still the owner, the defendant can claim from him the road, because his road is mixed in his ground anyway. Therefore, the owner of the four fields must give a path whichever he wants to, pass from his field, and if A takes possession in a path and claims that it is his it cannot be taken away from him except if the plaintiff will produce evidence.

## CHAPTER 149.

1. A has possession of a field belonging to B three years and he pleaded that he bought it and B brings witnesses that the field had belonged to him and he brought witnesses that A was his partner or lessee or guardian and therefore he did not protest, the field must be returned to B, but B must receive an oath (Hises) that he did not sell or give as gift the field. If, however, B cannot produce witnesses that A was his partner or lessee but A admitted himself and said

he was my partner but he sold to me the whole field, he is believed on account of migy because he can say he was never his partner (B. B. 42).

2. If a field belongs to two partners and one eats the fruit from the field three years and he pleaded that he bought the whole field and he lost the Bill of Sale, if the field contained eight yards he is believed and if it is less then he is not believed (L. C.).

3. If a son supported by the table of the father and he eats three years from the field belonging to his father, and he claims that he bought it and he lost the Bill of Sale or the father take possession of a field belonging to his son which is supported by his table, the possession is void (L. C. 42).

4. If afterwards he was rejected from the table the possession is valid.

5. It is an opinion that the same rule that a son-in-law in the field belonging to his father-in-law, the possession is void.

6. A father taking possession of a field belonging to his daughter or a son taking possession of a field belonging to the mother, the possession is void (L. C. 47).

7. If two brothers supported by one table and one source to all then it is an opinion that the possession each in the other fields is void.

8. If one brother is rich and the other is poor and the rich supports the poor and the poor lives

in a house belonging to the rich brother, the poor brother cannot claim possession (Tur).

9. A sold the fruit from his field to B for three years, and C ate the fruit of the field the same three years C cannot claim possession because A did not protest to him because he sold the fruit to B (Tur).

10. Dumb, insane or minor, if they take possession of a field belonging to A, the possession is void, because they have no plea that the field belongs to them, but the field must be returned to the A, and the same rule applies if A takes possession of the field belonging to the dumb, insane or minor (B. M. 39).

11. If A takes possession of a field belonging to a minor and he eats the fruit of the field one year while he was a minor and two years afterwards when he became of age, and A pleaded you gave to me or sold to me the field and I lost my Bill of Sale, the possession is void, until he has possession three years after he becomes of age (L. C.).

12. If a minor has a guardian and one takes possession of his field and claims that the guardian sold to him and he lost the Bill of Sale, it is two opinions if the possession may be taken as evidence or not (Tur).

13. If a guardian takes possession of the field belonging to an orphan and he claims that he bought it, the possession cannot be taken as evidence (B. M. 39).

## CHAPTER 150.

1. If A takes possession three years of a field, which has come to him as a pledge, the possession cannot be taken as evidence (B. B. 32).

2. If one starts to use the field as a pledge three years and there is no witness that the field is a pledge by him, and he claim that he has the right to use two years more, he is believed on account of *migy* because he can say he bought the field (B. M. 110).

## CHAPTER 151.

1. All them which possession by eating the fruit cannot be taken as evidence that they bought the field, *e. g.*, partner or a son which is supported by the table of the father, if they produce a deed stated that they bought the field or it is given to him as a gift, the evidence can be taken under consideration. With an exemption, a robber, or a husband in the field belonging to the wife even if they produce a deed that they bought the field, they are not believed because the plaintiff can plead that he gave the deed on account of the fear of the robber, and the husband received the deed from the wife to avoid quarreling with him (B. B. 47).

2. If the robber produces witnesses saying that they saw counting the money from the robber to the vendor, the field must be returned from the robber and the vendor must return the money.



3. It is an opinion in such case if B the vendor does not deliver the notification that the deal can be effective (Tur).

## CHAPTER 152.

1. All whose possession cannot be taken as evidence, if they die and the sons take possession afterwards of the same field three years and they claim that he bought the field from the vendor or he gave them as a gift, they believe it. If, however, they claim that they inherited the field from their father which A took possession of it three years he is not believed (B. B. 47).

ראה טליתו ביד כובס אומר לו מה טיבו אצלך אתה מכרתו לי אתה נתתו לי במתנה לא אמר כלום. (בבא בתרא מ"ה, ח"מ קל"ג)  
אמר ר' שמואל בר נחמני מניין להמוציא מחבירו עליו הראיה שנאמר מי בעל דברים יגש אליהם. (בבא קמא מ"ו, ח"מ קל"ג)  
המפקיד אצל חבירו בעדים אין צריך לפורעו בעדים. (בבא בתרא מ"ה, ח"מ קל"ג)

דברים העשוין להשאיל ולהשכיר ואמר לקוחין הן בידי אינו נאמן. (בבא מציעא קט"ו, ח"מ קל"ג)

נתחלפו לו כלים בכלים בבית האומן ה"ז ישתמש בהן עד שיבא הלה ויטול את שלו בבית האבל או בבית המשתה ה"ז לא ישתמש בהן עד שיבא הלה ויטול את שלו. (בבא בתרא מ"ו, ח"מ קל"ו)  
אמר ר"ל הגודרות אין להם חזקה אמר רבא אין להם חזקה לאלתר אבל יש להם חזקה לאחר ג' שנים. (בבא בתרא ל"ו, ח"מ קל"ה)  
אמר רב יהודה האי מאן דנקיט מגלא ותובליא ואמר איזיל איגדריה לדיקלא דפלניא דובניה ניהלי מהימן לא חציף אינש דגזר דיקלא דלאו דיליה. (בבא בתרא ל"ג, ח"מ קל"ז)  
שנים אוחזין בטלית זה אומר אני מצאתיה וזה אומר אני מצאתיה (בבא מציעא ב', ח"מ קל"ה)

ההוא ערבא דהוו מינצו עלה בי תרי האי אמר ידידי היא והאי אמר ידידי היא והלכתא לא תפסינן והיכא דתפס לא מפקינן (בבא בתרא ל"ד, ח"מ קל"ט)

תנו רבנן הבא לידון בשטר ובחזקה נידון בשטר ד"ר רשב"ג אומר בחזקה. (בבא בתרא קע"א, ח"מ ק"מ)

רבא בר שרשום נפק עליה קלא דקא אכיל ארעא דיתמי א"ל אביי אימא לי איזי גופא דעובדא היכי הוה א"ל ארעא כמשכונתא הוה נקיטנא מאבוהון דיתמי והוי לי זוזי אחרני גביה ואכלתיה שני משכנתא אמינא אי מהדרנא לה ארעא ליתמי ואמינא דאית לי זוזי אחרני גבי דאבוכון אמרי רבנן הבא למפרע מזנכסי יתומים לא יפרע אלא בשבועה אלא אכבשיה לשטר משכנתא ואוכלה שיעור זוזי דמגו דאי בעינא אמינא לקוחה היא בידי מהימנא כי אמינא דאית לי זוזי גביכו מהימנא א"ל לקוחה בידי לא מצית אמרת דהא איכא עלה קלא דארעא דיתמי היא אלא זיל אהדרא ניהלייהו וכי גדלי יתמי אישתעי דינא בהדיהו. (בבא בתרא ל"ב, ח"מ קמ"ט)

קרוביה דרב אידי בר אבין שכיב ושבק דיקלא רב אידי בר אבין אמר אנא קריבנא טפי וההוא גברא אמר אנא קריבנא טפי לסוף אודי ליה דאיהו קריב טפי אוקמא רב חסדא בדיה א"ל ליהדר לי פירי דאכל מההוא יומא עד השתא אמר זה הוא שאומרין עליו אדם גדול הוא אמאן קא סמיך מר אהאי הא קאמר דאנא מקרבנא טפי אבוי ורבא לא סבירא להו הא דרב חסדא כיון דאודי אודי. (ב"ב ל"ב, ח"מ קל"ט)

אמר ר' אבא אי דלי ליה איהו גופיה צנא דפירי לאלתר הוי חזקה.  
(בבא בתרא ל"ה, ח"מ קמ"ב)

היה ביהודה והחזיק בגליל בגליל והחזיק ביהודה אינה חזקה  
עד שיהא עמו במדינה. (ב"ב ל"ח, ח"מ קמ"ג)  
אמר ר"י אומן אין לו חזקה בן אומן יש לו חזקה ארים ובן ארים  
יש לו חזקה גזלן ובן גזלן אין להן חזקה בן בן הגזלן יש לו חזקה. (בבא  
בתרא מ"ז, ח"מ קמ"ט)

מי שהלך למד"ה ואבד דרך שדהו בין שהיו ארבע השדות  
המקיפים אותה, לארבעה אנשים בין שהיו ארבעה שקנו מאחד הרי  
כל אחד מהם דוחפו ואומר שמא דרך שלך על חבירו הוא לפיכך יקנה  
לו דרך במאה מנה או יפרח באויר. (כתובות ק"ט, ח"מ קמ"ח)  
המבקש להוציא זיו מכותלו על אויר חצר חבירו כל שהוא בעל  
החצר מעכב עליו שהרי מזיקו בראייה בעת שתולה ומשתמש בו.  
הוציא את הזיו ולא מיחה בו בעל החצר לאלתר הרי החזיק בעל

הזיו. (בבא בתרא נ"ט ח"מ קנ"ג)  
חנות שבחצר יכולים השכנים למחות בידו ולומר לו אין אנו  
יכולים לישן מקול הנכנסין והיוצאין אלא עושה מלאכתו בחנותו ומוכר  
לשוק אבל אינם יכולים למחות בידו ולומר אין אנו יכולים לישן מקול  
הפטיש או מקול הריחים מאחר שכבר החזיק לעשות כן ולא מיחו  
בידו. (בבא בתרא כ', ח"מ קנ"ו)

חצר השותפין שיש בה דין חלוקה או שחלקה ברצונם אע"פ  
שאין בה דין חלוקה יש לכל אחד לכוף את חבירו לבנות הכותל באמצע  
כדי שלא יראהו חבירו בשעה שמשתמש בחלקו ואפילו עמדו כך שנים  
רבות בלא מחיצה כופהו לעשות מחיצה ככל עת שירצה. (בבא בתרא  
ג', ח"מ ס' קנ"ז)

מי שיש לו בור לפניו מביתו של חבירו ויש לו דרך עליו אין לו  
רשות ליכנס שם אלא ביום בשעה שדרך בני אדם ליכנס ואין לו רשות  
להכניס בהמותיו שם אלא ממלא ומוציא לחוץ וכל אחד עושה מפתח  
לבור שלא יכנס שום אחד מהם אלא מדעת חבירו. (ב"ב צ"ט, ח"מ  
קס"ט)

חמש גנות המסתפקות ממעין אחד ונתקלקל המעין כולם מתקנות  
עם העליונה נמצאת התחתונה מתקנת את כולם ומתקנת לעצמה  
והעליונה אינה מתקנת אלא לעצמה. (ב"מ ק"ח, ח"מ ק"ע)

## CHAPTER 153.

## נזקי שכנים

## THE LAW OF NEIGHBOR DAMAGES.

1. A has a house near the yard belonging to B, and A wishes to stretch a pole from his walls in the air of B's yard. B has the right to forbid it because A damaged B with his seeing, when he will use the pole he will see his secrets which he does in the yard (B. B. 59).

2. If A stretch the pole the same must be cut up and as long as it is in existence A is forbidden to use it but B can use it (Ramo).

3. If A stretched the pole and B was silent and did not protest against it is considered as permission and as possession, and A may use the pole and not B.

4. It is an opinion that even in such case there must be a possession of three years than is considered as permission (Ramo).

5. If the pole was four fingers (one Tefach) and B did not protest, B has no right to build under the pole, and to restrain the use of the pole. If the pole is shorter than four fingers than B has the right to build under the pole and to restrain the use of the pole.

6. If the stretched pole was four fingers wide and sixteen fingers long and the owner of the yard was silent and did not protest, the owner of the pole has



the right to change the pole for another pole of sixteen fingers long and sixteen fingers wide, and the owner of the yard is forbidden to build under the pole except when he leaves forty fingers high between the pole and the building, shall the owner of the pole be able to use it (L. C.).

7. A wished to stretch a leader in the yard of B so that the rain water shall run in the yard of B, or he make a gutter on his wall and the water run in the yard of B, the latter has the right to protest and forbid it, and if he was silent and no protest it is declared as possession (L. C. 58).

8. If afterwards A wishes to close his leader and restrain the water from going into the same yard B can protest because as like A had possession that his water should run in the yard of B, the same B had possession in the use of the value of the water (L. C.).

9. If the house falls down even after so many years, when A will decide to rebuild he may put the leaders in the same place (Ramo).

10. If A wishes to remove the leaders from this side to another side or A wishes to make the leaders shorter, when the owner of the yard cares for the use of the water B cannot protest because he gained possession of the water and this run any way to him (L. C.).

11. The owner of the yard is permitted to build under the leaders because the leaders are made not

for any use purpose except to run the water and the building cannot interrupt the running of the water (L. C.).

12. If A wishes to put a leader in his house so that the water shall run in the public highway, the authorities of the city can forbid it (Rasbo).

13. If A puts a step-ladder on the walls of B or in his field and it is not nailed with nails and A claims that B permitted him, if the step-ladder is less than four steps it is not considered as possession, and if afterwards B wishes to build under the place he is permitted, if it was four steps it is considered as possession and when B wish to build under the step-ladder B must move with his building shall not interrupt the purpose of the ladder (B. B. 59).

14. A and B have in partnership one wall each is allowed to dig in the wall and put a beam in his side. If however the wall belongs to one the other is forbidden to use it.

16. If one partner digged in the wall and put a beam and the other was silent and did not protest, it is considered as possession, and even if the beam was small and he wished to exchange for a thick one, he is permitted (B. B. 6).

17. If the beam was made for the use of a short-time building before thirty days it is not considered as possession, and afterwards it is considered as possession (L. C.).

18. If it was made for the use of a tent for the holidays until the holiday is over it is not considered as possession, but afterwards it is considered as possession (L. C.).

19. If however A puts nails or cement in the beam and he claims that B allowed him, it is considered as possession, when he produces witnesses that B helped him or saw it and was silent.

## CHAPTER 154.

### POSSESSIONS OF WINDOWS AND DOORS.

1. A and B have a partnership in one court and B bought a house in the other yard nearby, he is forbidden to open a door in the partnership yard without the permission of the partners (B. B. 59).

2. Even if he raises an upstairs in his house, he is forbidden to open the door in the yard, because he increased the people going into the yard (L. C.).

3. It is permitted to raise an upstairs in his house and the door shall be opened to his house and the same rule applies if he wishes to divide his house into two parts, he is permitted because he does not open new doors to the court yard (L. C.).

4. If one of the partners in the yard brings to his house more families to live with him together, the other partner can forbid him because he increased the people of the yard, and the same rule applies if a

man rents his house to one family, and afterwards the tenant permitted his relatives or his good friends to live with him together, then the owner of the house can protest. If however they are supported by his table it cannot be forbidden either by the partner or the lessee (B. B. 60).

5. It is an opinion that a partner is permitted to put more tenants in his house so long as he does not put new buildings in the yard (Ramo).

6. It is forbidden to open a window in the yard belonging to the other, even if he is a partner to the yard, but he must receive permission from the partner, and then he is forbidden to open a window opposite the other's window, or a door opposite the other's door, but he must move farther, so that he shall not be able to see into the other's windows.

7. It is permitted to open doors and windows opposite the other one's doors and windows on a public highway.

8. One of the partners in the yard has a door in the yard made in two halves and he wishes to make it a single door the same width it is an opinion that he cannot forbid him even if he opens it the whole width of the door.

9. A has a door in a partnership yard and it was small he is forbidden to make it wider, and if it was a big one, it is forbidden to make from it two (L. C. ).

10. When A wishes to open a window in the yard



of B either a big or a small one either up or down stairs B has the right to prevent him because he damage him with his seeing even when the window is made high, B may claim you will go on a step-ladder and see my secrets.

11. A opens a window in the yard of B and the latter releases him or he helps him with the making of the window or he knows it and does not protest it is considered as possession and B cannot claim that he shall close the same.

12. A opens a window in the yard belonging to B and B knew and did not protest and the wall of A in which the window is, fell down, A did not lose his right, and when he will rebuild the wall he may put the window in again (Tur).

13. If B wishes to build two walls on the two sides of the window, *e. g.*, the window is on the east side and B wishes to build two walls on the north and south sides, of the windows, he must build four yards distant from each other and it is forbidden to make a roof to cover the walls except when he moves the roof four yards from the window he shall not make it dark (Tur).

14. If one of the partners of the yard wish to build higher the wall belonging to both more than four yards high at his own expense, even if he make dark the yard, the other partner cannot forbid it (Tur).

15. A gives or sells at one time the house to B and the yard to C and A has windows open from the house to the yard, if C wishes to build by the windows, he is permitted, and the same rule applies if he sells or gives the yard to another, and left the house for himself, it is permitted to the owner of the yard to build by the windows. It is an opinion that he is forbidden to build except when he moves four yards from the windows (Tur).

## CHAPTER 155.

1. A and B partner in one house. The first floor belongs to A and the second floor belongs to B. A is forbidden to build a stove in his house except when he has four yards high toward the ceiling, which it is the floor to B, shall not damage with fire the second floor, and B is forbidden to place a stove until he has a foundation the thickness of twelve fingers down and four yards from the stove to his ceiling, he shall not burn the second floor and even if he moves this according to this rule, if he damages the neighbor by fire he must pay for the damages (B. B. 20).

2. It is forbidden to plant or to dig a subway which collects the dirty water until he moves from the wall of the other twelve fingers wide (B. B. 17).

3. It is forbidden to dig a well or a lake to soak the clothes near the wall of the other until he moves

from there twelve fingers long, and the wall of the well must be cemented with cement (L. C. 17).

4. R has a wall near the wall of B *e. g.*, B's wall was east and R has one wall on the north side and R wishes to make another wall on the south, B can forbid him until he move his wall for yards. The place shall be vacant and shall be treaded by so many persons and the ground shall be harder (B. B. 22).

5. This law applies only to a wall in a garden, or a wall in a new city. If however it is an old city, the ground is long hard and he is permitted to build without moving (L. C.).

6. If A wishes to dig a well at the end of his field near the border belonging to B, if B's field not accustomed for a well he can dig near the border and cannot be protested from B, and when afterwards B will decide to dig a well in the same side he must move from the first wall twenty-four fingers wide. If the field of B was accustomed to dig a well he is forbidden to dig the well until he moves from the border twelve fingers long, and when B will decide to dig he will be moved twelve fingers shall be twenty-four fingers wide between one well and the other (B. B. 17).

7. A digs a well in his field and he sold half of the field to B and B wishes to dig a well in the same line he must move twenty-four fingers from the first wall even the field is accustomed to dig a well, because

the first one dig with permission because it was his own ground (Tur).

8. R dig a subway in his yard so that the rain water shall run in and when the water was overfull run into the cellar of B, R is bound to prevent the damages (L. C.).

9. Cemetery or skin factory must be moved from the city fifty yards (B. B. 25).

10. A has a tree and the twig was hanging in the field belonging to B the latter has the right to cut off the twig, so that the plower may not be prevented from going under it.

11. A has a fig tree and the twig is hanging over the roof belonging to B and this prevents him from painting his roof, it is permitted for B to cut the twig as much as prevents him from painting his roof (Tur).

12. If a tree is planted in the middle of the border even if it is nearer to one of the fields the two owners must divided the fruit of the tree, equal.

13. When A takes possession in one kind of the damages, *e. g.*, he opens a window in the yard of B. and A. pleads you permitted to me, or you release me after you saw it and you were silent and you did not protest and B claims just now I saw it and never knew about it before, or he says when I saw it I protested and you promised to me that you would close the window, and you delayed it from day to day. By



the above claims the burden of proof must be proven by B. and if B. is unable to prove then A. must receive an oath (Hises) and is free (Mimenadus).

14. If A. and B. live together and A's house is damaged and through them thieves come into the house of B. and he claims to A. fix your house or sell it to others because you make me damages, it is two opinions one stating that B. has the right and one stating that it is not A's. fault, and if A. does not fix the house and thieves steal from B he is not liable.

## CHAPTER 156.

1. If one tenant from the alley which is closed on the third side wishes to be a doctor, or a barber, or a writer of notes, or teacher of other languages, the rest of the tenants of the alley can forbid him because he increased the people incoming and outgoing and even the old tenants permitted him even one may protest.

2. The same rule applies if one has a house in a partner yard is forbidden to rent the house to one of such kind of tenants, but to sell the house to one of such kind is permitted, and if afterwards the buyer wishes to open such kind he can be claimed by the tenants (Ramo).

3. If one of the tenants of the yard wish to open a store he can be forbidden by the rest of the tenants because they can say we cannot sleep from the noise

of the incoming and outgoing people. It is however permitted to produce some article, in his house and go outside to sell it, and the rest of the neighbors cannot protest that they cannot sleep on account of the noise of the hammer, because he takes possession for it and they not protested it is an opinion that they cannot protest except when it is a sick person (B. B. 20).

4. It is permitted for a tenant to open a Hebrew school in his house and everything which belongs to religion, and the rest of the neighbors cannot protest (L. C.).

5. If one of the tenants of the alley or the yard open a doctor's office or a barber shop and the rest of the neighbors do not protest and were silent, he cannot claim possession, and the tenants any time can claim they cannot sleep on account of the noise of the incoming and outgoing people and the office must be closed.

6. The tenants of the alley can force each other not to hire the rooms to a tailor, tanner or any kind of a working man.

7. If one of the tenants opens a doctor's office and the others do not protest, or open a bath or a store and another tenant wishes to open another bath, he cannot be prevented from them who claim that you are taking away from me my living, and even if he is from another alley, he cannot be forbidden because

the same business is in the same yard anyway it is an opinion that the rest tenants can prevent but not the one of the same kind occupation (B. B. 31).

## CHAPTER 157.

### חלוקת שותפות

#### PARTNER IN REAL PROPERTY.

1. A and B are partners in one yard and they decide to divided it with their consent, each one can force the other to build a wall in the middle of the yard so each one shall not be able to see the secret doings by the other, and even it was a long time without a wall each one can force the other to build a wall at any time he wishes (B. B. 3).

2. The wall must be built on the ground and the expense of both of them, and even one possesses two-thirds and the other only one-third, the wall must be built at the expense and the ground of both parties (L. C.).

3. The width of the wall must be built according to the custom of the locality (L. C.).

4. If the wall falls down they must share the second-hand material equally (L. C.).

5. If the yard does not contain the portion of dividing four yards for each one, and they cannot force each other to divide, and one was satisfied to

divide the yard on condition that the other shall put the wall at his own expense and on his ground, there must be made an agreement or any evidence showing that the wall is made at his own expense and his own ground (Tur).

6. The height of the wall must be built four yards at both expenses.

7. If one of the partners wishes to build higher than four yards at his own expense, It is two opinions if the other can be against or not because he diminished the air of the yard, except when it is a custom of the locality shall not protested for it (L. C.).

8. If the wall in the partner's yard falls downs and it was built wide or it was higher than four yards, and one partner wishes that the wall shall not be built more than four yards or not wider than the custom of the locality. The right is with him (L. C.).

9. If the wall falls down each one of the partners can force the other to build four yards high. If one makes the wall higher the other cannot be forced to help to the expenses over four yards. If however he makes some use of the height, *e. g.*, he puts another wall thereby and makes six yards the height he must help to the expenses of the two yards even if the first wall is ten yards high (B. B. 5).



## CHAPTER 158.

1. If two are partners in one garden and they decide to divide each one can force the other to put a fence in the middle of the garden even if there is no such custom (B. B. 4).

2. The height of the fence must be built Ten Tefochim (40 fingers high). Another opinion holds that it must be four yards high (Tur).

3. If A has a field between the three fields of B and B makes a fence for his three fields on three sides between himself and A and A becomes fenced account it and B claims to A that he should assist him with the expenses of the fence A is not liable to pay for it because it is not fenced on the fourth side. The same rule applies when A has a shanty between the three sides of B (L. C.).

4. If however the fourth side is fenced either by A or by B. A is bound to pay half the expenses of the fence until four yards height.

5. This rule applies only when A or B fence the fourth side with a good fence if however the fourth side is fenced with a cheap fence, *e. g.*, sticks, A must pay only the amount of the price of the sticks.

6. If before B starts to fence the sides A stated I will give nothing for the expenditure of the fence because it is enough for me to have a fence for one zus if A was notified before he fenced the fourth side it is effective, if afterward it is ineffective.

## CHAPTER 159.

1. Two houses and their roofs adjacent to each other and they are made for residence and even one is in one side of the street and the other is across the street, each one must make a half fence to the roof and a little more, and the other on the other side. It shall not be impossible for each one to see the secret doings of each other, even the people on the public street can see their doing anyways, he can claim to his neighbor he shall make the fence, because the people on the public streets see for a short while but the neighbor sees it always (B. B. 4).

2. If A has a roof near the yard of B, A must make a fence four yards high, so he shall not see the secret doings by B (L. C.).

3. If two roofs adjacent each to the other are not made for residences, it is not necessary for a fence of four yards but only for a fence of Ten Tefochim (40 fingers high) he shall be forbidden to pass the fence and when he pass over the fence he must be captured as a thief.

4. If one claim that he wishes to build half of his roof on the east side and the other wishes to build on the same side, a lot must be made and the one who will win will make it on that side.

5. If one says, I will pay half of the expenses and you make on your property the whole fence or give

me half expenses and I will build the whole fence on my property, he must be heard.

6. If however the plaintiff was waiting until the other made his half of the fence on his side and he stated as long as you started to make your side finish all the fence of your building and I will pay half of the expenses. If the starter is unsatisfied he cannot be forced.

6. If the roofs are far each from the other in such a case that the damages of seeing cannot be prevented with a half fence, and the whole fence must be made on one property when they come to an understanding which shall build the whole fence on his property and receive half of the expenses from the other, an agreement must be made that half of the fence belongs to the other. If they cannot agree between each other a lot must be made who shall build the whole fence on his property and receive half of the expenses from the other (L. C.).

## CHAPTER 160.

1. A has a roof near the yard of B, A has damaged B with his seeing but B did not damage A, therefore, A must build a fence of four yards to prevent the damages of seeing, and B is not bound to help him with the expenses to four yards but only with the expenses to Ten Tefochim (40 fingers high) (B. B. 6).

2. If the roof is lower than the yard A must build a fence from his ground until it is raised four yards from the ground of the yard, because B shall not be damaged with his seeing.

3. If the roof is lower than the yard four yards it is two opinions if B is bound to build a fence or not (Tur).

4. If two yards each one lower than the other, the ground of the higher yard must be dug lower a half width of the fence and the fence must be build on the ground belonging to both and must be four yards higher than the ground of the higher yard the higher yard must build the fence from the ground of the lower until his bottom and from the bottom until four yards high they both must contribute (L. C.).

### CHAPTER 161.

1. The citizens of each city can force each others to help toward the expenses to fix a door to the fence to the alley or other necessities to the yard.

2. If one has a house in the yard and he does not live in her he is bound to assist in the expenses to put a door and latch to the door of the yard (B. B. 12).

3. The collection of these necessary improvements must be made according to the wealth and means of the citizens (L. C.).

4. If one of the tenants of the yard refuses to contribute his share toward the expenses of fixing



the yard and refuses to rent his house the rest of the tenants have the right to rent his house and pay the expenses (Tur).

5. If one of the members of the yard wishes to keep a cow or to raise chickens, the rest can forbid him and also everything which is not a custom in the locality to do, the rest of the members may forbid him to do, with the exception of washing clothes in the four yards which belongs to his door, and when the water shall not go on the other's property, then the rest of the members cannot forbid it.

6. Five yards which all pour the water in one pipe, and the pipe gets damaged, if the damage in the pipe happens near the last yard the other yards must assist in the expense of repairing the pipe. If the damages are by the first one, the expenses of the repairing belongs only to the him, and nobody need to help her to the expenses. If the damages is made by the second one, the first must help the second one. The principal thing is that the first one must help each one of them and nobody helps her, and the last one everybody must help her and she helps not nobody (B. M. 108).

## CHAPTER 162.

1. The members of the alley can force each other to put frames for the welfare of the alley but not doors and even all the members of the alley decide

to put doors, the city board has the right to prevent it because sometimes when there is a crowd on the public highway the crowd goes into the alley (B. B. 12).

2. If an alley is open toward another city and the tenants of the alley wishes to close the alley and prevent them from passing through the alley, it is forbidden to do so, even if they have another way to pass (L. C. 12).

3. If one wishes to open a door in a closed alley, the members of the alley can forbid him because he increased the incomers and outgoers, persons in the alley (L. C. 11).

4. If the alley is open on the third side it is permitted to open a door. If the alley has doors which is kept closed during the night, it is forbidden to open a door because he increased the incoming and outgoing people in the night time (L. C.).

5. It is an opinion if one wishes to open a door in another alley, even the members of the first alley can forbid him because the travellers of the other alley will pass through the door in the alley (Tur).

• 6. If one has a door and closes it, it is permitted to open any time when he wishes, so long as he does not restrain the frames.

7. If one wishes to close his door and open a door in another alley, the members of the first alley can

forbid him if it is put a separate tax of each alley, because he increased the tax of the rest (L. C.).

8. If there is no separate tax on each alley, it is permitted to do so but he must restrain the frames of the door.

9. Five yards which they opens in a closed alley, they all have the right to use with the first to the public highway, and she has the right to use only by her door, and the last one can use by her door and with everyone of the five, therefore if the second builds a bench by his door they all can protest but not the first one. The same rule applies if the second wishes to open a door between himself and the first one. The first one cannot protest but the third and the rest can forbid it (B. B. 12).

## CHAPTER 163.

1. The citizen of each city can force each other to contribute to the expenses toward the building of a wall and a door and a bars to the city and to build a Synagogue and to buy a Torah, so that each one shall be able to read in them (B. B. 7).

2. If one has a yard in another city, the citizens of the same can force him to dig with them a well for water, but not for other expenses, and everyone who lived in city twelve months or he buys a house for residence even on the same day he is bound to help with the expenses of the necessities for the city to

build the wall and to pay for the guarding of the city (L. C.).

3. The collection for the building of the wall must be fixed according to the nearness to the wall, *e. g.*, the nearest premises to the wall must pay more toward the expenses than the farther ones. It is an opinion that the amount must be collected according to the wealth and means of the persons and after it is appraised according to the wealth it must be again appraised according to the nearness of the wall, *e. g.*, if two houses equally near to the wall and they are equal in wealth they must pay equally. If one is nearer to the wall and he is not wealthy and one is far from the wall and he is wealthy, the nearer one does not have to pay because he has nothing to be afraid of, and the far must pay, if they both equal in wealth and one is near to the wall and the other is far to the wall the near must give more to the collection (L. C. 7).

4. Every expense which is necessary for the protection of the city must be collected from all the citizens even from orphans, with the exception of learned man because the Torah guard them. However, for the expenses of fixing the roads and streets must be collected even from the learned man, when they hire laborers for them, if however the citizen themselves go out with a shovel and work themselves, the learned man are not bound to help them because it is impos-



sible for the learned man to make themselves slander to work with a shovel.

5. If the citizens dig a well for to bring the water to their city the expenses can be collected even from orphans, because it is a chance for them to have water with which to water their fields. Therefore, if it happens that after the digging of the well and water does not flow, the amount which is collected from the orphans must be returned to them, because they have no benefit for the money (L. C.).

#### CHAPTER 164.

1. A and B are partners in one house, the first floor belonging to A and the second floor belonging to B, the repairing which is necessary from the ceiling including the ceiling until the floor, must be fixed by A, and from the beams upwards must be fixed by B. It is an opinion that the ceiling must be fixed at the expense of B. The roof must be fixed at the expense of both. This above rule holds good by two partners. If however the second floor is rented to a tenant the ceiling must be fixed by A (B. M. 117).

2. If the house falls down they must divide the second-hand material according to the measure of the height of each stairs. If there are some stones or bricks broken and it cannot be recognized as to whom it belongs, it must be decided accordingly to the fall.

3. If one recognizes a part of his stones that they not broken and the other admitted it of all or a part of it, and of the other part he said he did not know, the recognizer can take them even they are bigger and better than the other ones, and the second partner may receive from accordingly amount from the good ones (L. C.).

4. If B says to A build the first floor so that I shall be able to build the second floor on it, and A refuses to build, then B may build the first floor and may occupy the premises until he will return to him all the expenses of the building, and afterwards he will build the second floor of it if he wishes (L. C.).

5. If no one of them wishes to build, the ground can be divided, two-thirds belonging to the first floor and one-third belonging to the second floor, and the same rule applies when they sell the ground to another, the money must be divided two-thirds to the first floor and one-third to the second (B. M. 117).

6. If A decides to build he must build exactly like it was before the same length and width, and the same amount of windows. If however he wish to exchange for more windows or make higher the first floor it is not effective. If however he wish to make the wall decker and he wants to decrease the amount of windows, it is effective (L. C.).

7. The same law applies if B wishes to build the second floor, he must build it in the same shape like

it was before. If he wishes to make wider the walls he cannot be heard because he makes it heavier for the wall on the first floor. If he wishes to increase the windows, he can be heard. If he wishes to decrease the windows, he cannot be heard (L. C.).

## CHAPTER 165.

1. If A builds a subway in a mountain and made inside a wine-cellar and B on top plants a garden, and the ceiling of the wine-cellar is broken to the extent of Four Tefochim (16 fingers) long and wide, and A refuses to fix the ceiling, B has the right to move down and plant the whole garden in the subway which had belonged to A. (Such articles which does not need rain like horse-radish or radish.) Until A will fix the ceiling (B. M. 118).

## CHAPTER 166.

1. A had a wall near the garden of B and the wall fell down, A can be forced to clean the garden belonging to B. If A says clean it up yourself and therefore the second-hand material will belong to you as payment, if B refuses he cannot be forced. If B is satisfied and he cleans up the place and takes the second-hand material in his possession and afterwards A retracts and claims give me my material and I will give you the expenses for the cleaning, he can-

not be heard, but so long he does not take possession of the material, even if they are lying in B's yard, and A says take them for your use, does not belong to B because he wishes to get rid of him.

### CHAPTER 167.

1. If two gardens are situated one above the other and some herbes grass grows between them, as much as the upper owner can take with his hand it belongs to him, and the remainder belongs to the lower owner. If the upper owner's hands can be reached to the twigs but not to the routes, he shall not take them and if he takes them they cannot be recovered from him (B. M. 118).

2. If one tree is planted in the middle of the border even if it is bent more toward one side, the two neighbors must divide the fruit equally among them (B. M. 107).

### CHAPTER 168.

1. If a river overflows and washes the olive trees belonging to A and the deposits in the field belongs to B (where they have produced olives), and B claims my field has produced these olives while A says my trees have produced these olives (the olives belong to the owner of the field but he must pay to A the value of the olives to the amount they were worth when the river washed them (B. M. 100).



2. If A sold his olive tree for cutting of burnt wood to B and they produced some olives, if it was stipulated that they shall be cut at once, the fruit belongs to A. If however it was stipulated that B could cut any time he wished, the fruit belongs to B. If there was no stipulation among each other, if the olives give such fruit which cannot bring out less than a quart oil from six gallons beside the expenses, then it belongs to A. If however they can produce a quart of oil from six gallons beside the expenses, they must divide equally (L. C.).

## CHAPTER 169.

1. If A has a well inside of the house of B he has the right to pass through his house to the well, and he is permitted to go in only during the day time when it is possible for all people to go in, and he is forbidden to bring in his cattle to drink from the well, but he must fill his vessel and bring it out, and each one can put a lock on the well so that each one shall not use without the consent of the other (B. B. 99). If however A has a room in the house of B he is permitted to go in either by day or night (Ramo).

2. If A has a garden inside the garden of B, A has the right to pass through the garden of B, he is forbidden to go in during the night or to bring in dealers, and he is forbidden to pass through this field

to another, except when it is necessary for the purpose of his garden (B. B. 99).

3. If however B has pointed out to him a way on one side of the field with his consent, he can go in any time he wishes and he can bring in dealers, but he is forbidden to pass through this way to another field except when it is for the use of his field.

#### CHAPTER 170.

1. Five gardens which are watered from one well and the well becomes spoiled, if the place where it is spoiled is near the first one they all must share the expenses of the repairing. If it is by the second one, the four must assist him with the expenses but not the first one. If it is spoiled by the last one, he must pay the expenses himself and nobody can assist him (B. M. 108).

2. If a well passes through all the length of the five fields and the first one wishes to close the water until his field is watered and afterwards he will open and the others will water their fields, and the others claim that they wish to close the water first so that their fields will be watered, whichever one is stronger he win

#### CHAPTER 171.

1. If A bought by B half of his field or they both bought by C one field or they received the field as a

gift and one of the partners wishes to divide and take his share separately, if there is in the field a portion that can be divided, A can force the other partner to divide. If there is no such portion then A cannot force the other to divide (B. B. 11).

2. How much is the portion of dividing? A yard must contain four yards long and wide, for each partner, besides the four yards which belongs to the doors. A field must be long that requires nine gallon seeds for each one. If it is a garden it must be long which requires half a gallon seeds (L. C.).

3. A field must be so long that it shall be sufficient to plough for one day work for one laborer for each. A wine yard must be thirty-six trees for one partner and thirty-six trees for the other partner, so that it shall be sufficient for one laborer for one day for each one, and if it is a field that is watered by a vessel it must be so long that it will be sufficient for one laborer for one day for each partner.

4. It is an opinion if one partner has another field thereby he can force the other to divide the field even if there is no portion for dividing (Tur).

5. It is an opinion that even if there is a portion for dividing, if it is impossible to give to each partner a separate way to pass to the field, it cannot be divided (Tur).

6. If A says to B in a case where there is no portion for dividing, *e. g.*, a vessel or a house, etc., sell me

your share for this amount or buy my share for the same price, the right is with A, and B can be forced to sell his share or to buy the share of A. If however A does not wish to buy, or he is unable to buy he cannot force B to buy from him his share even for a lower price, because A can say I don't want to buy, but I want to sell. Therefore, two brothers one is poor and one is rich and they inherit from the father a bath or a wine-yard, if the father were accustomed to rent it they must rent it so long as they wish to stay in partnership together and the money must be divided equally. If the father made it for his own use, one cannot force the other to rent it but they must use it like the father used, and the rich brother can say to the poor you buy olives and make wine out of them and keep them in the wine-cellar or buy servants and they will wash in the bath and the poor brother cannot force the rich brother to buy his share. If the poor brother says buy from me my share or sell me your share I will borrow money and I will pay you or I will sell it to another, the right is with him (B. B. 13).

7. If A and B say that they do not want to buy from each other their shares but they are satisfied to sell it to another, they must do so.

8. If A and B say I won't sell my share but I want to buy your share or each one does not want to buy the other's share and they do not want to sell



their share but they wish to stay in partnership, if the place is made for rent they can rent it and divide the rent between them, and if the place is not made for rent, if it is a yard or a store or a house which is impossible for both of them to live in at once, they can occupy the place by the year, one year one partner and the other year the other partner, but not less because it is impossible to move in a premises less than one year (L. C.).

9. If one partner has two-thirds and the other only one-third they must make a lot one for two years and one for one year and the one which has two-thirds can use it two years and the other one can use it for one year. If the father left a bath, both must use it every day, and one cannot claim that he wants to use it one day and the other should use it the next day, because he can say that he wants to use it every day (B. B. 12).

If it is an article which cannot be used by both, at the same time, each can have the use of it on separate days.

10. If two men rent a place together, but cannot get along, either one can say to the other "rent me your share or I will rent you my share." If it is such an article or place which can be divided, there are two opinions, whether it can be divided or not, because it is rented for a time.

11. If it is their portion for dividing, and one

stated as follows, *e. g.*, when the yard contains seven yards, I will take three yards and you take four yards, without paying for the extra half yard, the other one can say I do not want to take presents. There is another opinion that is effective. If however, he says "you shall take the larger portion and pay for the extra half yard, I will take the small portion, or I will take the big portion and I will pay for the extra half yard and you take the small portion, and if you say that you do not want the small portion, I will buy the whole yard, even though he did not leave to the other to take the whole, he can be heard (Tur).

12. If a yard contains seven yards, and A has title to four yards and B to three yards, and B does not wish to divide, A can say I will take three yards and one yard I will leave and be partner with you to the one yard, and afterwards, he may say to him, buy from me the yard or I will buy from you the three yards (Tur).

13. If the articles is such kind which it is impossible for one to use all. If one may say to the other, or buy my part or I will buy your part, there are two opinions (L. C.).

14. If the two articles have a different use, *e. g.*, two vessels each is used for a different purpose, and each of the partners need both, even the value of the two are equal, one cannot say to the other, take one

and I will take the other, because each of them is necessary for the two (Tur).

15. The same rule applies if the both has a field and a wine-garden in partnership, and there is no portion for dividing, even the value of the two is equal, one cannot force the other to take the field, and he shall take the wine-garden or vice versa (L. C.).

16. If he says buy my part or I will buy your part he cannot be heard. But if he says of one of them, or buy my part or I will buy your part and the other shall remain in partnership, and afterwards he can say of the other the same, that is effective (L. C.).

17. If the two articles which the same use and the value of them is equal and not one of them has a portion of dividing, each one can say either buy my part or I will buy your part, if the articles is difference in the value, there are two opinions if it is effective or not.

18. If two brothers inherit two large houses which each one contains a portion of dividing, and one brother claims, that each house shall be divided in two parts, and the other claims each shall take one house, the right is with the latter (Tur).

19. It is a opinion that when one says buy my part, or I will buy your part, but I will give you the

money after thirty days, or I will give you credit for thirty days. He cannot be heard (Tur).

20. If the father leaves an estate, which does not contain the portion of dividing, and he leaves sons older and minors. There are two opinions, if the Court should appoint a guardian, and he shall say, either buy the portion of the orphan, or they should buy the portion of the oldest. Because the guardian is forbidden to sell the part of small orphans (L. C.).

## CHAPTER 172.

1. A yard which must be divided must be given four yards long to each door of each house and the width of the door, and the rest may be divided equally. When the door is wider than four yards, he must receive the width of the door, and when the door is smaller than four yards, he must receive four yards the width.

2. If one has a house with two doors and the other has a house with one door, the house with the two doors, must receive eight yards, and the other house four yards (B. B. 11).

3. This rule applies only if the two partners take possession of an abandoned ground, and one builds a house with two doors and the other builds a house with one door, and afterward they fence a yard (Tur).

4. If however, two partners buy or inherit the



two houses, each one is entitled to an equal part and the yard must be divided equally among them.

5. This rule applies only when the house is equal in value and not one of them needs to pay the difference for the house of the two doors. If however, the house of the two doors is more in value than the other, and the winner of the house pays the difference, he must receive eight yards in the yard because it is included in the money which he paid for it (L. C.).

6. If a house has a number of doors on every side, he must receive four yards for each door. If however, he uses only one door, he can receive only four yard (L. C.).

7. The door of a chicken house is not entitled to four yards.

8. A house which is closed, is entitled to four yards, if the frames are taken out it is not entitled to four yards (L. C.).

## CHAPTER 173.

1. If partners decide to divide an article which is not enough, portion of dividing even they spoiled it with the dividing the article may be divided.

2. If it is a Bible as the Five Scrolls of Law, and if it is bound in one volume it cannot be divided. If it is made in two volumes, if the contents is a difference, one cannot say to the other, buy my part or I

will buy your part. If the contents are the same, one can say to the other buy my part or I will buy your part (B. B. 11).

3. If they distribute the estate by lots, after it is shown by one of them that is his part it is considered as a settlement by all, and they all cannot withdraw. Another opinion holds that lot cannot bind the transaction shall be effective, but when one makes a settlement (kinion) in his part then they all cannot withdraw.

4. If two brothers divide the estate of the father, they consider in the law as two buyers, and therefore if one receives a house and the other a yard, and the house has windows open to the yard, the owner of the yard has the right to build nearby the windows. Although he makes it dark for the other (B. B. 7).

5. If brothers or partners wish to divide a field, so that each shall have his portion separately. If the value of the field is equal the same must be divided according to measurements. If one demands that he shall be given a certain side because it is near his other fields, there are two opinions, one holds that he must be heard, because it is a favor for him and no risk to the other, therefore he can be forced to do so, and another opinion holds that he must pay for the privilege (B. B. 12).

6. If however one side is near the river, or near a road, and they appraise the value near the river

more than near the road and one claims give me the better side for the appraised price, because it is near my other fields. He cannot be heard, and they must make a lot (L. C.).

7. If however he says give me the bad side and you take the good side he can be heard (L. C.).

8. A first born son, which is entitled to two shares in the father's estate, he must be given the two parts in one side, when the two parts are of the same value, if it is a difference in price, it is an opinion that even the first born cannot receive the two parts in one side (Tur) (B. B. 12).

9. If a field is rounded on her four sides, the east and north is a river, and west and south is a road, it must be divided diagonally, so that each one shall have the river and the road (L. C.).

10. If two men buy one field in partnership, one man two-thirds and one man one-third, and they decide to distribute it the one of the two-thirds must receive his two-thirds in one side because he bought the bargain at once, and the privilege is included in the bargain if however three men buy one field, each one of them one-third and afterwards he bought the one-third of the other not entitled to receive the two-thirds on one side, because before he was not entitled to two-thirds but now he came with the power of the other (Tur).

(For Chapter 174 see Code 3, Page 302.)

אחד מהשותפין שאמר לחבירו במקום שאין בו דין חלוקה או בדבר שאי אפשר שיחלוקו כגון שפחה או כלי מכור לי חלקך בכך וכך או קנה ממני חלקי כשער הזה הדין עמו וכופין את הנתבע למכור לחבירו או לקנות ממנו.

אבל אם אין התובע רוצה לקנות או לא ימצא במה יקנה אינו יכול לכופ את חבירו לקנות ממנו אפילו בשער הזול שהרי חבירו יכול לומר לו איני רוצה שאקנה אלא שאמכור לפיכך שני אחים אחד עני ואחד עשיר שהניח להם אביהם מרחץ או בית הבד עשאן האב לשכור השכר לאמצע כל זמן שירצו לעמוד בשותפות עשאן האב לעצמן אינו יכול לכופ אחיו לשכור אותם אלא משתמשים בהם כדרך שנשתמש אביהם והרי עשיר אומר לעני קח לך זיתים ובא ועשם בכית הבד קנה לך עבדים וירחצו במרחץ ואין העני כופה את העשיר לקנות חלקו אא"כ אמר לו קנה ממני או מכור לי והריני לזה וקונה או מוכר לאחרים וקונה הדין עמו. (ב"ב י"ג, ח"מ קע"א)

אחד מן האחים או השותפין שמכר חלקו לאחר שאר האחים או השותפין מסלקים לזוקה, ויש אומרים שאפילו אם הוא מצרן מסלקו השותף או האחין וכן עיקר. (ב"מ ק"ח, ח"מ קע"ה)

כל הרוצה למכור קרקע ובאו שנים כל אחד מהם אומר אני אקח בדמים אלו ואין אחד מהם בעל המצר אם היה האחד מיושבי העיר והאחד משכני השדה שכן העיר קודם, שכן ות"ח ת"ח קודם, קרוב ות"ח ת"ח קודם, שכן וקרוב שכן קודם, קדם אחד מהן וקנה זכה ואין חבירו שראוי לקדם לו יכול לסלקו הואיל ואין אחד מהם בעל המצר. (ב"מ ק"ח, ח"מ קע"ו)

מי שיש לו בית בשכירות ובית שאצלו נמכר אינו יכול לזכות מדין בן המצר ואם קדם וקנאו בן המצר יכול לסלקו ויש מי שחולק וסבירא ליה דיש בשכירות דין מצרנות. (רמב"ם)

השותפין שהטילו לכיס זה מנה וזה מאתים וזה שלשה מאות ונתעסקו כולם בממון סתם ופיחתו או הותירו השכר או הפחת יחלקו ביניהם בשווה לפי מנינם לא לפי המעות ואפילו לקחו שור למביחה שאלו טבחוהו היה נוטל כל אחד מבשרו לפי מעותיו אם מכרוהו חי ופחתו או הותירו השכר או הפחת לאמצע, במה דברים אמורים בשנשא ונתנו במעות שנשתתפו בהם אבל אם המעות קיימים ועדיין לא הוציאו אותם ופחתו או הותירו מחמת המטבע ששינה המלך או אנשי המדינה חולקין השכר או ההפסד לפי המעות ואם התנו ביניהם הכל לפי תנאם בין בריוח בין בהפסד. (כתובות צ"ג, ח"מ קע"ו)

תנו רבנן אחד מן האחים שמינוהו המלך גבאי או פולמוסטוס אם מחמת האחין לאחין אם מחמת עצמו לעצמו ואפילו הוא חריף טפי. (ב"ב קמ"ד, ח"מ קע"ז)



מר זוטרא ורב אדא סבא בני דרב מרי בר איסור פליג נכסייהו  
בהדי הדדי אתו לקמיה דרב אמרו ליה ע"פ שני עדים אמר רחמנא  
דאי בעי למיהדר לא מצי הדרי בהו ואנן לא הדרי או דילמא לא  
מקיימא מלתא אלא בסהדי אמר להו לא איברי סהדי אלא לשקרי.  
(קדושין ס"ה, ח"מ ס' קפ"ב)

הלוקח כלים מכית האומן לשגרן לבית חמיו ואמר לו אם מקבלים  
אותם ממנו אתן לך דמיהם ואם לאו אתן לך שכר מועט ונאנסו  
בהליכה חייב ואם נאנסו בחזרה פטור אבל אם נגנבו או אבדו חייב.  
(ב"מ פ"א, ח"מ קפ"ו)

ההיא אתתא דאמרה ליה לההוא גברא זיל זבין לי ארעא מקרובי  
אזל זבן לה א"ל אי הוו לי זוזי מהדרת לה ניהלי א"ל את ונוולא אחי  
אמר רבה בר רב הונא כל את ונוולא אחי אמר סמכה דעתיה ולא  
גמר למקני. (ב"מ ס"ז, ח"מ ר"ז)

הנותן ערבון לחבירו ואמר ליה אם אני חוזר כי ערבוני מחול  
לך והלה אומר אם אני חוזר כך אכפיל לך ערבונך אם חוזר בו הלוקח  
קנה זה הערבות שהרי הוא ת"י ואם חוזר בו המוכר אין מחייבין  
אותו לכפול הערבון שזו אסמכתא היא ולא קנה. (ב"מ מ"ח, ח"מ ר"ז)  
מקח שנעשה באיסור כגון שהוסיף בשווי המקח בשביל המתנת  
המעות או שפסק קודם שיצא השער ולא היה לו למוכר ונתקיים בקנין  
או באחד מדרכי ההקנאות המקח קיים ויתן כשער של היתר ואין  
אחד מהם יכול לבטל המקח ומיהו הלוקח יכול לחזור בו שלא ליתן  
כשער היוקר. (ב"מ ס"ה, ח"מ ר"ח).

נאמן בעל המקח לומר לזה מכרתי ולזה לא מכרתי אימתי בזמן  
שהמקח יוצא מת"י אבל אין המקח יוצא מת"י הרי הוא עד אחד בלבד  
ודינו בעדות זו כדין כל אדם שהרי אינו נוגע בעדותו לפיכך אם נטל  
הדמים משנים מאחד מדעתו ומאחד כע"כ ולא ידע ממי מדעתו וממי  
בע"כ בין שהיה המקח בידו בין שהיו שניהם תופסין אין כאן עדות  
כלל וכל אחד מהם נשבע כתקנת חכמים בנקיטת חפץ ונטל חצי  
המקח וחצי הדמים. (קדושין ע"ג, ח"מ רכ"ב)

חייבים ב"ד להעמיד ממונים שיהיו מחזרים על החנויות וכל  
מי שימצא אתו מדה חסרד או משקל חסר או מאזנים מקולקלין רשאים  
להכותו ולקנסו כאשר יראה לב"ד. (ב"ב פ"ט, ח"מ רל"א)

אמר ר' פפי משמיה דרבא האי סיטומתא קניא למאי הלכתא  
רב חביבא אמר למקניא ממש רבנן אמרי לקבלוי עליה מי שפרע  
והלכתא לקבולי עליה מי שפרע ובאתרא דנהיגו למקני ממש קנו.  
(ב"מ ע"ד, ח"מ ר"א)

רשאים בני העיר לקוץ להם שער לכל דבר שירצו ולהתנות;  
ביניהם שכל מי שיעבור קונסים אותו כך וכך.

## INTRODUCTION TO THE LAW OF BORDER NEIGHBOR.

And "Thou shalt do that which is right and good in the eyes of the Lord, in order that it may be well with thee and that thou mayest go in and take possession of the good land which the Lord hath sworn unto thy Father" (Deuteronomy 7:18).

"He hath told thee, O man, what is good and what doth the Lord require of thee but to do justice and to love mercy and to walk humbly with thy God" (Micah Chap. 6-8).

This law is based of the following chapters and the Torah teaches us that we all are born of one world shall live in peace and freedom and happiness, and shall each not seize the portion which belongs to the other, according to the law Chapter 237, when one tried to buy a bargain and the other take the previous and bought it, he is called wicked.

And the Torah commands "Thou shalt not hate thy brother in thy heart (Leviticus 19-18). But live together friendly and happy and do what is right in the Lord's eyes, and it is understood that the work of two fields is about the same as one field and therefore the buyer which bought the field must do the right and give it up to the border neighbor so he shall have the two fields together, and he shall go and buy a field in another place because what it is a favor for one and it is no risk for himself he is bound to do this. (See Chap. 174, Code 5.)

## CHAPTER 175.

## הלכות מצרנות

## LAW OF BORDER NEIGHBOR.

1. If one of the brothers or partners sold to a stranger his part of the field, the other brothers or partners have the right to return the money to the buyer, and take the part of the field because the partner or the brother is more entitled to buy the part more than the stranger (B. M. 108).

2. It is the opinion that even the stranger has a field, thereby the brother or the partner, has the preference to buy the part of the field (Tur).

3. If one sells his field to a stranger, either the transaction is made by himself, or through an agent, or through the Court. The border neighbor has the right to return the money to the buyer, and to receive the field, even if the buyer is a learned man and a relative or a neighbor to the premises, of the vendor and the border neighbor is an ignorant person. The border neighbor has the preference to buy the field, even the vendor states if I will be forced to sell the field to the border neighbor, I will not sell at all, although it belongs to the border neighbor, against the will of the vendor (Ramo).

4. The stranger-buyer is considered as agent to the vendor and the same witness has the right to write

another Bill of Sale to the border neighbor, and they do not need another form of agreement (Tur).

5. If the field value is increased or decreased in the price, the border neighbor must give the price which was given to the vendor (Tur).

6. If the buyer improves the field, and made it better he is considered in the law, as a lessee, and he is entitled to receive the benefit or the expense, if it is more than the benefit (L. C.).

7. If the buyer improves the field after the claim is made by the border neighbor, he is entitled only to receive the smaller amount either from the benefit or the expenses (Tur).

8. If the buyer cuts out the tree from the field, and damages the field, he is bound to make good the damages, and this amount must be deducted from the price (L. C.).

9. If the buyer eats the fruit from the field, which he ate before the border brings the money, belongs to him, and that which he eats after the money is brought, it must be paid by the buyer (L. C.).

10. If the buyer borrows money by a creditor before the claim is made by the border neighbor, and he is unable to pay the debt, the creditor cannot hold the field as responsibility for the debt (L. C.).

11. If the buyer bought the field for one hundred zus and it is worth two hundred zus, if the vendor will give it to every one for the same price, *e. g.*, he



sold it because he was short in money, the border neighbor must give him one hundred zus, if however the price was set only for him, and for another the price is two hundred zus, the border neighbor must pay two hundred zus. If it is a doubt, if the vendor will give for the same price to another or not, it must be proven by the border neighbor.

12. If the buyer receive the field from the vendor of credit, if the border neighbor wishes to buy the field, he must pay cash for it. If the vendor is not against it is effective.

14. If the buyer pays for the field two hundred zus and it is not worth more than one hundred zus, the border neighbor must pay for the same two hundred zus (B. M. 108).

15. If the border neighbor claims that there is a conspiracy between the vendor and buyer to press more money from him then the buyer must take an oath, by holding a holy thing in his hand and he can receive the two hundred zus (L. C.).

16. If there are witnesses that he gave two hundred zus and the border neighbor claims there are only a trust between him and the vendor, and he knows positively that he did not pay more than one hundred zus, he must give him two hundred zus, according to the testimony of the witnesses, and after he must receive an oath that he paid the two hundred zus and he is free (L. C.).

17. If the field is sold on condition, either it stipulated by the vendor or by the vendee the border neighbor cannot claim the field, until the conditions are fulfilled (L. C.).

18. If the field has four border neighbors, on each side one neighbor, and they all wish to buy the field, they are all entitled to them, and the field must be distributed diagonally (L. C.).

19. If it was five border neighbors, *e. g.*, in three sides to one neighbor and one side two borders neighbors, these two are considered in the law as one, and the field must be distributed in four parts diagonally and these two are entitled to one-quarter (L. C.).

20. If one of the border neighbors take the previous and bought the whole field either from the buyer or from the vendor, the whole bargain belongs to him (L. C.).

21. If some border neighbors are here and some absent those who are present have the right to return the money to the buyer and may take possession of the field (Mamnides).

22. If one man buys one field of two vendors and the border neighbor wishes to return the money for half of the field which is near his field, it is not effective, because he must either return all the money or the claim must be dismissed (Tur).

23. If one buys two fields from one vendor the border neighbor has the right to return the money

from one field and the buyer shall retain the other (Tur).

24. If a man sells a field to two men, the border neighbor has the right either to return the money to the two or to return the money to one and release the other (L. C.).

25. If the border neighbor before he returns the money to the buyer, sold his field near the border he loses his border right and even the buyer who bought from him cannot claim the rights of the border neighbor because the first buyer wins the chance before (L. C.).

26. If A appoints B as agent to sell his field and B is a border neighbor to the field, he is forbidden to buy the field for himself on account of suspicion, and when he sells the field to C he cannot claim the right of the border neighbor (Tur).

27. If the buyer dies before the border neighbor returns to him the money and the field is inherited to his heirs, it is two opinions if the field could be recovered to the border neighbor or not (Tur).

28. If the buyer gives the field as a gift to A and a condition was stipulated in case the field will be executed for a debt of the buyer, the buyer shall not be obligated to pay the gift receiver. There are two opinions if the border neighbor has the right to pay money to the gift receiver and recover the field or not (L. C.).

29. If the first buyer sold the field to another buyer, the border neighbor has the right to return the money to the other buyer (Tur).

30. If a creditor collects the field for the debt of the owner, the border neighbor has the right to pay the debt and take possession of the field (L. C.).

31. If the first owner wishes to pay the amount of the debt to the border neighbor the field must be returned to him in all time (L. C.).

32. If a creditor of the vendor executes the field from the border neighbor it is an opinion that the border neighbor can collect the money from the buyer, and the buyer can collect the money from the vendor, and the other authorities hold, that the border neighbor can collect only from the vendor, not from the buyer (Mamanides; Tur).

33. If one exchanges one field for another, no claim of the right of the border neighbor can be made (Tur).

34. If a field is exchanged for personal property, *e. g.*, he exchanges a field for an ox or a vessel, the ox and the vessel must be appraised in the value, and the border neighbor can return the same value and take the field (Rambom).

35. If the buyer takes advice from the border neighbor about buying the field, and he advises him to buy the same, the border neighbor has the right to



claim afterward his right, except when it was made a form of agreement, then he cannot claim for it.

36. It is an opinion if the border neighbor says in the presence of witnesses you be my witness that I release my right of border neighbor, it is effective and he cannot claim (Tur).

37. If A sold his whole fortune to B, the border neighbor of one field cannot return the money of one field and even he wishes to return the money of the whole fortune he cannot be heard (B. M. 108).

38. If the vendor sold his field to the same vendor which he bought the same from, him the border neighbor cannot claim his right, if the vendor sells the field to the son of the first vendor, it is two opinions whether the border neighbor can claim his right or not (L. C.).

39. If the field was sold for the purpose of paying tax to the Government or for expense for burial, or for the support of a wife and daughters, even the money was borrowed for these purposes and the field is sold to pay the creditors the border neighbor cannot claim his right of the transaction (L. C.).

40. If before it is sold for these purposes, the border neighbor claims that he wishes to give the same price for the field, which is given by the others, it is two opinions if the border neighbor has the previous or not (Ramo).

41. If it is a disagreement between the buyer and

the border neighbor, the buyer claims it is sold for the purposes of tax, etc., and the border neighbor claims that is sold for private purposes the burden of proof must be done by the border neighbor, and if he cannot prove the buyer must take an oath (Hises) and he is free (L. C.).

42. If the buyer claims to the border neighbor that the field which you possess is robbed by you, or you are a lessee or it is a pledge, the border neighbor must prove that the field belongs to him legally, and if he cannot prove he loses his right.

43. If the border neighbor pay the money to the buyer, and afterward it is found that his field by the border does not belong to him. The buyer has the privilege either to keep the money and remain the possession to the border neighbor, or to return the money and recover the field, and the border neighbor must pay for the use of the fruit (Tur).

44. If the robber who takes now possession of the field wishes to return the money to the buyer on account of the rights of the border neighbor, if it can be proven that he knew of the sale at the time when he sold, and he has the right to return the money at the same time when the robber returns, and he was silent, his claim is not effective, if he did not know before, the claim is effective (Tur).

45. If the field is sold to a woman or a small orphan, the rights of the border neighbor cannot be

claimed. The same rule applies if he sold it to a hermaphrodite, because he is a doubt if he is a woman.

46. If the border neighbor is a minor, and the Court sees there a chance for him to buy the field, then they may return the money to the buyer (Tur).

47. If one wishes to sell a field, and two buyers come at once, each one wishes to give the same price for the field, and not one of them is a border neighbor, if one of them is a neighbor from the same city, and the other is a neighbor of a field, the previous belongs to neighbor of the city. If one is a neighbor and the other is a learned man, the learned man has the previous. If one is a relative and the other is a learned man, the learned man has the previous.

48. If one is a neighbor and the other is a relative, the neighbor has the previous. If one of them take the previous and bought the field it belongs to him, and the other cannot claim (Tur).

49. If the field is sold to his partner in business, the border neighbor cannot claim (B. M. 108).

50. If the ground belongs to one, and the building or the tree belongs to another, if the owner of the building has a right to the ground for a certain time each one has a right of the border neighbor, and if one of them sold his part to a stranger, each one has the right to make the sale void, and buy the bargain for himself, if it is no right to the owner of the building or the tree to the ground, but every time the owner

may command to remove the tree or the building. If the owner of the ground sells his ground to a stranger, the owner of the building cannot claim the right of the border neighbor, if however the owner of the building or the tree sells it to a stranger, the owner of the ground has the right to claim the right of the border neighbor, and return the money to the buyer, and recover the bargain for himself (L. C.).

51. The same rule applies if a neighbor thereby sold a field to a stranger, the ground neighbor may claim the right of border neighbor, but not the owner of the building, except when he has a right to the ground (L. C.).

52. The right of the border neighbor can be held good only for real property not personal property, by houses or seats which is in a Synagogue the right of the border neighbor can be claimed( L. C.).

53. If one gives a field as a gift to another, the border neighbor cannot claim the right, if it is written in the deed, "responsibility," if it will be executed, as a debt for the gift giver, he shall be bound to pay for it, the border neighbor can claim his right (L. C.).

54. If the field which is near the border neighbor was abandoned (Hafkar) and one takes possession of the same, and the border neighbor claims his right of the field, if it is possible to find another field like this to take possession. His claims are effective. If



it is impossible to find such field in another place his claim is not effective (B. M. 108).

55. If one pledges his field and after he sells his field to the creditor, the border neighbor has no right to claim it. If however the border neighbor sells his field even to a stranger, the creditor cannot claim the right of the border neighbor (L. C.).

56. If before the field was pledged, the border neighbor claims that he wishes to make the loan to the borrower, because perhaps, afterward you will sell the field to the creditor. He cannot be heard, because the borrower can say, the first one is more mild for me. If the Judge understands, that it is a swindle, the creditor can be refused (Tur).

57. If a field near the pledged field is for sale, the right of the border neighbor can be claimed by the borrower. If he refuses to buy the field, and the creditor bought it, it is two opinions, if the border neighbor can claim it or not (L. C.).

58. If one lease a house for a certain time, and after he sells it to a stranger, the lessee cannot claim the right of the border neighbor because it no border right for rent (L. C.).

59. If one lease a house and the house thereby is for sale, if the lessee can claim the right of the border neighbor, it is two opinions (Ramo).

60. If two rent a house in partnership, and one wishes to rent his part to another, and the partner

wishes to rent the same, the right is with the partner (Tur).

61. If one rents his house, and after he sells it to the same lessee, the border neighbor cannot claim for it (L. C.).

62. If A rents the first floor to B, and the store to C and afterwards he decides to sell the first floor and the store, each one of them is entitled to right of the border neighbor for the same which he occupied (Ramo).

## CHAPTER 176.

### הלכות שותפים

#### PARTNERSHIP LAW.

1. If two men agree to contract a partnership this consideration cannot be contracted verbally, but it must be made with a form of agreement (Tur).

2. Therefore even if they make a form of agreement, that each one shall bring his money, and write an agreement, and both signed and witness testified of them, it is non-effective, but it is necessary that they shall bring the money and put it in one purse and they both must raise the purse, then the partnership is valid (Tur).

3. If, however, they start to do business with the same money, even they did not put the money in one purse and raise it, the partnership is valid (L. C.).

4. If two decide to go into partnership with stock,

*e. g.*, they made a form of agreement, that one shall bring a barrel of wine and the other a barrel of honey, when they bring it the partnership is effective (L. C.).

5. The same rule applies if they mix the fruit together, or they hire a loft in partnership, and they put the wine and the honey in the place, the partnership is valid even without form of agreement.

6. If two laborers decide to be partners in the profit which they will make in the future, and a form of agreement was made. It is two opinions. One states that it is not effective, because no one can confirm such an article which does not exist in the world, and the other states that it is effective, because the obligations can be put on each of their hands, and the hand is in existence (Tur; Kesuboth 58).

7. If however the laborers are manufacturers with their stuff and they sell it and made partner with their money, and they make profit from the labor and the merchandise. Every profit which is benefited by them either from the stock, either from the labor, must be divided equally (L. C.).

8. If the partner appraises their merchandise and contracted a partnership, and after find it was overcharged, each one has the right to claim the overcharge (L. C.).

9. If however they mixed up the merchandise without appraising, and sold it, and put the money in

the business, they must figure how much each one's merchandise was worth, and each one must take his found first, and the profit or loss must be shared equally (L. C.).

10. If three partners put a certain sum in their partnership, one hundred zus, one two hundred zus, and one three hundred zus, and it was not stipulated about the profit or loss, the profit and loss must be divided equally.

11. Even the partner bought an ox for the purpose of slaughter, and even when they slaughter it, they will share according to the portion of the money, if they sold the ox alive, they must share the profit or loss equally (Kesuboth 93).

12. If the partnership money remains in existence, and the price of the money was increased or decreased, account of the rules of the Government, the profit or loss must be divided according to the portion of the money (L. C.).

13. If at the time they contracting the partnership, it was stipulated about the profit and losses, it must be fulfilled (L. C.).

14. It is an opinion if one invest in a business one hundred zus, and the other two hundred zus, and they lose all the money, the partner who invested only one hundred zus, is not bound to put fifty zus from his pocket (Tur).

15. It is an opinion if the business was made for



a certain length of time, and after the time is passed the business was not divided, and the business brings profit, this profit must be divided according to the portion of the money (L. C.).

16. It is an opinion if the merchandise of the partner was stolen or lost, it must be share according to the portion of the money (Tur).

17. Each partner is considered in law as a compensation garden therefor if partnership articles are stolen or lost while in the possession of one partner, he is bound to pay for the loss. When each partner attends to the business at a certain time, if however they start to attend to the business at once, even afterward each attend to the business separately, they are not bound to pay for it, because they started the business at once (B. B. 42; see Cap. 346, Code 6).

18. If one starts to attend the business first and afterward they both start to attend the business, and one articles of the partnership is stolen or lost, if the same happens at the time the first attended to the business, he is bound to pay for it. If it happens at the time when the other starts to attend the business, the other is not bound to pay for it, because the first one was with him when he started to attend the business (B. M. 95).

19. If two men contract a partnership, each one is directed to attend the business according to the rules of the locality, and must do everything with the con-

sent of the other and he is forbidden to export or import the merchandise to another city or to give credit to anybody or to make partners with another, or to give the merchandise in trust to a bailee, without the consent of the other, or if he violates the command, and did the above things and he notified the partner and he was satisfied, even though a loss happens afterward, he is free from any claim. If he does not notify the partner, he must pay for the loss (Tur).

20. If one partner violates the order, and goes to such a place without the consent of the other, or gives credit to a customer, and he fails to pay for it, or he deals in other kinds of merchandise without the instructions of the other partner, and it was lost, he is bound to pay for it. If he made a profit, they must share equally (L. C.).

21. Therefore if A gives money to B in partnership to buy wheat, and he buys barley or vice versa, and there was a loss in the purchase, he must make it good. If there was a profit, they both must share equally (B. K. 102).

This same rule applies when one of the partners takes into the partnership another without consent of his partner. If there are any profits they must be divided equally but if there is a loss it must be fixed by himself.

22. If one of the partners was dealing in forbidden stuff without the consent of the other, if there

was profit it must share equally. If there was loss, he must make it good (L. C.).

23. If one of the partners say that we should transfer the merchandise to another city, because we could get there a better price. Even though he takes all the responsibility for any accidents which may happen on the way or the decreasing of the price of the merchandise, the other may be against it because he may say I do not want the risk with my money in another city (Rambom).

24. If one of the partners wishes to keep the fruit until a certain time when the market will be better, the second partner cannot forbid it, and if he sells before the market time he is bound to pay the difference in the price. If there is no market for the fruit and one wishes to keep it, until the fruit will be increased, the other can be against it (Gitin 31).

25. If the partnership is made for a certain length of time, each one can prevent that the partnership should not be dissolved before the time arrives or the fund will be finished, and each can prevent that neither one should take money from the profit or the fund until the end of the time (B. M. 105).

26. If the partnership is made without a specified date of dissolving, they can divide whenever they wish, and each one may take out his share from the merchandise (L. C.).

27. If the merchandise is such kind which cannot be divided, or when divided it will be spoiled, they must sell the merchandise and divide the money (B. M. 67).

28. If there is a market for such kind of merchandise, each one can force the other not to sell it before, and no one should take the money from the fund or from the profit, without the permission of both (L. C.).

29. If a partnership is made for a certain time, and the time expires, and one wishes to divide without the consent of the other, then it must be divided in the presence of three trustful men, even they are not educated. If it is divided in the presence of less than three, the division is not effective (B. M. 31).

30. The above rule applies only to a division of fruit, because there is a difference in price. If however there was a division of cash money, it can be divided without the presence of three men and one may take his portion and leave the remainder with the Court (L. C.).

31. If one partner dies, the partnership must be dissolved, although the partnership was contracted for a certain length of time, the heirs cannot protest against the dissolving, because the life partner may say "I went into partnership with your father because he was an expert business man, but I do not want to be partners with you, because you are not



experts.” If the partner is willing to remain with the heirs, they may say “our father trusted you as a partner, but we do not trust you” (Tur).

32. If one of the partners becomes ill and he is unable to attend to the business, the partnership can be dissolved, because the other partner may claim that he does not want to bear the burden of double work (Ramo).

33. If there is a custom in the locality concerning such a case, it must be decided according to the custom (L. C.).

34. If one partner sells the merchandise for a certain length of time, and the time for dissolving the partnership arrives, and one partner claims that he wishes to dissolve the partnership, and the other claims that he does not want to dissolve, until the debt will be collected, the business can be divided, and when they will collect the debt, they will divide the collected money (Tur).

35. If the partnership owes a debt to another, if it was stipulated that each shall not be surety for the whole amount of the debts, they may divide, and when the time for the credit will be due, each one will give his half. If it was not so specified, the law is that one is responsible for the whole amount, therefore the other may say that we shall hold the money and do business until the time of the credit will be due, and then we will make the division (L. C.).

36. If one says to the other we will make the division and I will leave the whole amount for the credit in your hands and you do business with the money until the time the credit becomes due, the other partner may be opposed to it, because he may claim the business is more profitable with two than with one (L. C.).

37. If A gives money to B for the purpose of going to a certain place of business to buy goods or fruit, A cannot retract and demand the money to be returned. B must be required to attend to his duty, because it is considered as though the partnership is contracted for a certain time (L. C.).

38. If one receives a business to act as manager for a certain length of time, the receiver has the right to retract, as a laborer even though he starts to attend business (see Cap. 333, Code 6). The owner however has not the right to withdraw.

39. If two partners have a claim against a person, and one of the partners makes a complaint, and loses the case, if it was a claim for an oath, and the defendant receives the oath to the one partner, he is free of the other, because the same oath is enough for one as for a hundred. If however it was a money claim, if the other was not in the city at the same time of the trial, he can make another claim. If he was in the city, and he failed to come to the trial, he cannot make claim again (Kesuboth 94).

40. The above rules apply only when the case was lost, not on account of his testimony, if however it was lost on account of his admission, *e. g.*, he replies that he has no evidence or witness, the other cannot lose on account of this admission, and if he has evidence or witnesses he may produce them and open a new trial, but he cannot change the testimony of the first partner (Tur)

41. A and B were partners in business, and B bought clothing from a heathen, and sold it to C for credit, and a note was given for the money to the heathen by C for a certain length of time, and B was an endorser of the note, and afterwards A and B decide to dissolve business, A is bound to give a note to B in case C fails to pay the note to the heathen, and B will be bound to pay the note to the heathen, A shall give half of his money, and the expenses of the collection of the note (Tur).

42. If a community buys the Five Scrolls of Law for a certain amount of money, and a condition was made in case one of the members will move from the city, he shall receive his share from the others in cash, and the price of the Scroll of Law is increased, and the one who moves wishes to get his share in accordance with the increase it is ineffective but he may only receive the original price.

43. A and B receive an order from a big concern for a loan of \$20,000 and A and B agree to do the

business in partnership, and A gives \$10,000 as his share to the firm, and the firm notifies them that they do not care for more loan, and A says to B if you wish to be partners with me in the loan give me \$5,000 and before B has time to give it, he dies, and the heirs claim the profit of the loan. If when A asks for the money B promises to give him his share, even if he delay the giving, he is entitled to the profit. If B refuses to give his share the heirs are not entitled to the profit (Tur).

44. If two men are partners in debt on a note, and one partner wishes to move to another country, and take the note with him, the other partner can forbid him to take the note with him (L. C.).

45. If one partner used his house or store for the partnership, he has the right to charge rent for same, and the rest of the money can be divided between them (L. C.).

46. If A and B are partners in business and A was appointed to go to another city regards of business to sell goods, and he becomes arrested in that city, and he spends money to release himself, B is not bound to assist in the expenses for his release (Tur).

47. If a horse was pledged by A and B, and they kept him in a stable, and B permitted the keeper of the stable to loan the horse to C and while in C's possession the horse was robbed. A has the right to collect either from B or from C (Tur).



## CHAPTER 177.

1. When brothers are partners in one estate and one of them is appointed by the Government as director or secretary and is given a large salary, if the appointment is made through the influence of the father, *e. g.*, the father was an expert in that office, and the Government decided to appoint the son to same position and to do a favor the orphan, all the salary or income which he get belongs to the estate, although the appointed brother may have been clever. If he was appointed on his own account the profit belongs to himself.

2. The same rule applies, if the Government places a certain tax on the estate, if it was on account of the estate it is to be paid by all, if it was in regards to himself because he is rich, he must pay it out of his own money (B. B. 144).

3. If one of the partners become ill, and it was on account of his negligence, *e. g.*, he went into the cold in winter, or in the heat in summer, and the expenses of the treatment is definite, the expenses must be covered by him, if the expenses are indefinite, they must be paid from the treasury of the partnership. If however he becomes ill accidentally, even if the expense is definite, it must be paid out of the treasury of the partnership.

4. These above rules are good when the business was attended to by the sick partner, and the one other

was silent, only took a part in the profit. But if two partners take active attention in the business, if one becomes ill accidentally, he must pay the bill out of his own money (Tur).

5. If the partners desire their support from the treasury of the partnership, and one becomes ill accidentally, and the expense of the sickness is indefinite bills must be paid from the partnership treasury.

6. If one of the brothers wish to go to college to study or to learn an occupation, the other brothers must appraise his share of the cost of living and give him his portion, but not more, even if he need more when he is supported by himself (see Cap. 60, Code 1).

7. If A commands B, his partner, to commit a crime, and any damages that may sustain, he will pay a full amount for it and B does the crime, and has damage, A must only pay half of the damage, because B gave his consent to do the crime (Tur).

8. If however the crime was committed without the permission of the partner, he is not bound to pay the other for the damage, and is not entitled to take profit of the crime (L. C.).

## CHAPTER 178.

1. If one partner requests the Tax Commissioner, that he should release him of the tax, and he does so, the benefit belongs to the partnership treasury, be-

cause he is like an agent for the partnership. If however it was specified by the Commissioner that he is doing it for the favor of the said partner, it belongs to himself (Tur).

2. If one partner does work in the field which belongs to the partnership without the consent of the other, he is entitled to a compensation as lessee. The same rule applies when the partner attends to personal property without the consent of the other. If the partner protested, *e. g.*, he build a building and the other is against it if it is of such sort which is necessary then the other must pay his share, if it is not necessary the other can say to the builder take your frames and boards and clean the place (Ramo).

### CHAPTER 179.

1. If an article which is well known that it belongs to the partnership, and even it is in the possession of one partner a long time, and he claims that he bought the article from the partnership, he is not believed (B. B. 4).

2. Even if he claims that two-thirds belong to him and one-third to the other, he is not believed with his possession, but they must divide equally (Tur).

### CHAPTER 180.

1. If two partners possessed one yard, and each make a vow, that each shall not benefited from the

other. If the yard contains a portion of division, eight yards in width and length, each one is forbidden to pass the four yards belongs to the other. If it is no portion of division, the vow is not legal, and each one is permitted to pass through the whole yard (Tur).

### CHAPTER 181.

1. If a company of travelers, go in the wilderness, and robbers rob their fortune, and it was impossible for them to save himself and one of them saved the fortune from the robbers, it belonged to him. If it was possible to save for every one of the company, and one of them started before and save the whole fortune, even it was stipulated before that the whole fortune shall belong to him. The fortune belongs to all, and to each one shall be returned the amount he had before, and if it was possible to save by exertion, and one of them saved the whole fortune, it must be shared with the others (B. K. 106).

2. If it was stipulated before that he will save for himself, it belongs to him, because when they heard that he said he save for himself, they must make exertion, and save themselves and when they fail to do so, they left the fortune abandoned, therefore it belongs to the saver (B. K. 107).

3. If two partners travel in the wilderness, and robbers rob their fortune, and one saves the whole



fortune, it belongs to the partnership, if the saver stipulated before that he saves for himself, it is considered as a division from the partner, and it belongs to him (L. C.).

4. If one hire a laborer to save the robbery, the amount he saves belongs to the employer, if the laborer says that he saves for himself, it is considered like he retracts and the saved fortune belongs to himself, when it is impossible to save by himself (L. C.).

## CHAPTER 182.

### הלכות שלוחין

1. In every mission when one appoints an agent, to act on his place it is considered as he acts himself, except in a crime mission, if one appoints an agent, he should do a crime, the agent must receive the punishment himself, because he must obey the command of the Lord, who is the teacher, not the command of the sender, who is only the scholar (Kidushin 43).

2. This rule applies, only when the agent is of full age, if however he is a minor, or if the agent not know that is a crime mission the sender is liable.

3. If A says to B his agent, sell for me a certain field or the personal property, or buy for me real or personal every transaction which is done by the agent is effective (Tur).

4. The appointment of the agent is not necessary

to make a form of agreement or witness, but if he receives a command from the sender without any witness, as long as the sender admits that the agent is appointed, by him it is effective (L. C. 65).

5. If A says to B buy a certain merchandise and I will be partner with you, and B bought it, A cannot retract because B is considered as his agent (Ramo).

6. If the agent violates the command of the sender, *e. g.*, A appoints B to buy for him a field, and a condition should be made with the vendor, in case the field is executed from a creditor of the vendor for his debt, the vendor should make good the loss and the agent bought the field without the responsibility, and the vendor knew that he bought the field for A, the transaction must be void. Even though the agent makes a settlement for the transaction (L. C.).

7. If however he does not notify to the vendor, that he bought the field for A, the transaction of the field is effective, but the sender can claim the responsibility from the agent (B. B. 169).

8. If the agent buys the field or the article and it is found that he was overcharged, even a small amount, the appointment is void, because the sender can claim that he appointed him for his benefit not for his loss (Kesuboth 99).

9. If however it was stipulated at the time of the appointment, either for benefit or loss, even he buys an article which is worth one diner, for one hundred

denarim, or sold an article which is worth one hundred denarim for one diner, it is effective, and the sender must fulfill the transaction (L. C.).

10. It is an opinion that so long as the sender cannot prove that he appointed the agent without specifying whether for a benefit or loss, the vendor can say that the agent is appointed either for the benefit either for loss, and the transaction is effective, because possession is nine points in favor of the possessor, and it must be proved by the recoverer.

11. If the agent defrauds the buyer who bought an article from him, and the overcharge was less of one-sixth of the value it is a release, if it was a sixth it must be returned (L. C.).

12. If A commands his agent that he should sell one acre from his field, and the agent sells two acres, the buyer cannot receive more than one acre, but the buyer can claim that he bought two acres because he needs them, if you only wish to sell me one acre, I do not want to buy at all (Kesuboth 97).

13. If the agent is commanded to sell two acres, and he sells one acre, the transaction is void (L. C.).

14. If the agent receives a command to sell the field to one man, and he sells it to two men, the deal is void (L. C.).

15. If the sender commands his agent to sell his field, and it was not specified to how many he should sell, and he sold it even to a hundred, the deal is valid.

When one deed was made for the transaction or the agent sign the deed himself but when the agent sold to more than one and the sender need to sign the deeds the transaction is void (Kesuboth 97).

16. If A appoints his agent to buy a field for him, and the agent bought the field, and the vendor made a condition that the bargain should be returned to him when he has the money, and the agent says you and my sender are good friends, and you both will settle in a good manner, the condition must be fulfilled, and the field must be returned when the vendor wishes (B. M. 67).

### CHAPTER 183.

1. A man gives an agent money to buy merchandise, and the latter fails to do so, the sender may have only blame of honor of the agent, but if it is known that he bought the same merchandise for the sender's money, the latter may force the agent to give him the merchandise.

2. If A gives money to B, to buy a field or personal property, and the agent sees that it is a bargain, he puts aside the money of the sender, and buys the field or personal property for himself. The transaction is valid, but the agent can be included among the sinner (Kidushin 59).

3. If the vendor is a good friend to the agent, and sell the bargain only to him, and not to the



sender, he is permitted to buy it for himself, but he must notify the sender before he buy the sentiment of the matter (L. C.).

4. If the agent afraid that another will come before him and take the previous and buy the article, he can buy it without notifying the sender (L. C.).

5. If the agent bought the field with the sender's money, the bargain belongs to the sender, even he puts the money in a form of a loan (B. K. 102).

6. If an agent was ordered to buy wheat, and he bought barley, or vice versa, either for his own use or for business. If the price of the barley decreases, the agent must make good the loss, if the price is increased the profit belongs to the sender. Another opinion holds in such cases that they both must share the profit because the profit is made account the violation of the agent (L. C.).

7. If the price of the merchandise was set up and well known by all, and the vendor added to the agent a certain number more of the count, or to the weight, or to the measure, the added amount must be shared between the agent and the sender, if it was informed that the added sum is given for the benefit of the agent, all belongs to him. If there is no set price on the merchandise, the additional sum belongs to the sender (Kesuboth. 78).

8. If A gives to B, his lawyer, a certain amount of money, to settle with his creditors for 50 per cent.

and B settles for 25 per cent. he must return the remainder of the money to A.

### CHAPTER 184.

1. When three men give money to an agent to buy for them merchandise, and the agent bought for a part of the money, if the money was mixed up, and even it was in the mind of the agent, that the merchandise should be for one of them, it belongs to all, and they must distribute the merchandise according to their amount of the money (B. M. 74).

2. If the money was bound and silence, and even he has in mind that he bought for all of them, it belongs to the one that the merchandise was bought for his money (L. C.).

3. R bought a field from C, and he says I bought the field for L, and the deed was written in the name of L, and afterwards R request C to write another deed in his name, because I bought it for myself, C is not forced to write another deed in R's name. If it was a condition made before that he buy the same for himself, and he writes the deed in L's name, should not be known that he bought the field, C is forced to write another deed in the name of R, and even he not say the same in the presence of B but he express the same in the presence of witnesses he is entitled to receive another deed in his name (B. K. 102).

## CHAPTER 185.

1. A broker is considered in law like an agent, when he takes compensation for his mission, and if he violates the consent of the owner he must pay for the damage, *e. g.*, R gives an article to C and commands to him to sell the article not less than 100 zus, and the latter sold it for 50 zus, C must pay 50 zus from his pocket, if he sold the article for 200 zus it belongs to R.

2. The broker is forbidden to buy the article for himself, even for the same price which is commanded by R (Tur).

3. R gives to B an article to sell it for 4 zus, and when the article was delivered to B, he says I will give for it 4 zus for my own use, R cannot retract (Tur).

4. If R says to B if you get more than 4 zus for the article the same shall belong to you, even though B was silent, the surplus belongs to B (L. C.).

5. If R claims that he ordered his broker to sell the article for not less than 100 zus, and the latter claims he receives the rights to sell for 50 zus, the broker must take an oath, because he admitted a part of it. If the broker puts in cash the 50 zus either at the time of the trial or before the claim is made, he must receive only an oath (Hises; see Chap. 75, Code 1).

6. If the buyer knows the articles belongs to R and C acted only as broker, the article must be recovered to R and the buyer can put a ban on who may be permitted to sell the articles for 50 zus (Tur).

7. If the broker notifies the buyer that the articles belongs to R and after the buyer bought it, R says that he does not want to sell it for that price, the articles must be returned, because R is not satisfied with the price for the article and R must reserve a ban that he did not permit the broker to sell for 50 zus or was satisfied and retract after. Another opinion holds that the buyer must not return the bargain even the broker admits to the plea of R.

8. R has a house for sale, and C the broker recommends to sell it to L, and R refuses to sell it to L, because L is his enemy, and afterward it was found that R sold it to L through another broker, R is bound to pay the commission to C (Ramo).

9. Any broker which the article is stolen or lost while in his possession either by going or coming, he is bound to pay for it because he is considered in law as a Guardian with compensation. (See Code 4, Chap. 303; B. B. 87.)

10. R gives to A a diamond ring for sell and A the broker loses the stone from diamond, the broker must take an oath that the stone is not in his possession but it is lost, and R must take an oath how



much the stone is worth, and he may received the value of the stone from the broker.

11. If R gives an article to B to pledge it in a pawnshop, and when R asks for his article, B says that he does not remember where he pledged it, he is bound to pay for it, because it is considered as a neglect, however, if R commands the broker to pledge the article in a certain pawnshop, and B does so, and after the pawnshop denies it, the broker is free (B. M. 35).

12. When a broker sold an article on credit and the buyer refuses to pay or the broker gives the article to an expert for testing and the expert denies it the broker is bound to pay because for such matter he must receive the permission from the principal (B. M. 93).

13. A marriage-proposer is considered in the law as a broker and when he makes a match and he demands the commission at the engagement, it depends upon the rules of the locality. If the rule is to pay at the time of the engagement, it must be obeyed. If it is the custom that it shall be paid at the time of the marriage, he must wait until the marriage. If the party retracts before the marriage, he loses his commission except when it was stipulated before he made the match, that he should receive his commission after the engagement, then it must be decided according to the stipulation (Ramo).

## CHAPTER 186.

1. If one takes jewelry from a jeweler to send to his bride, and it was stipulated before, if the bride will be satisfied with them, he will pay for it, if not he will return the same, and pay a small amount for the honor, and an accident happened to the jewelry, if it was on the way to bride, he is liable, but if it happened on its return, he is not liable. If it was stolen or lost, he is liable even if it happened on his return (B. M. 81).

2. If a peddler receives goods on memorandum from a store to deliver it to a certain place, and if it will be sold until the certain time, he will pay for it, and if not he will return, and an accident happened to the goods, either on the way or by his return, he is liable. It is an opinion that this law prevails only on such articles which is easy to be sold in the market at the same price which was set up by the storekeeper, but the peddler wishes to transfer it to another city to receive a better price for it, if the articles are not such kind, he is not liable, but when it is stolen or lost he is liable.

3. If a price was set up for the goods and it was stipulated if the article brings more than the set up price, it shall be divided between the storekeeper and the peddler, if an accident happens, he is not liable, but when it is stolen or lost, he is liable (Ramo).

## CHAPTER 187.

1. Every agent who claims that an accident happened to the goods entrusted to him, and he lost so much, he must receive a Torah oath and he is free. If the accident happened in such a place where it is possible to obtain witnesses, it must be proved by them, if he fails to prove it by witnesses, he is not believed, and he must pay (B. M. 83).

2. It happened a man ordered his agent to buy for him 400 barrels of wine for the money which he has in the possession of the agent and he bought it, and it is found afterwards when the sender tasted the wine, it was found that it is sour and the agent claims that he bought good wine, but it got sour on the way to the sender, and the sender claims perhaps it got sour before you bought it or maybe that you bought the sour wine at a cheap price to defraud me and it was declared by the great sages that in such transaction is possible to prove with witnesses his contention; if he fails to bring witnesses the agent must pay for it. The same rule applies to any plea which a partner or guardian pleads and it may be proven by witnesses, either he must prove by same or he must pay (L. C.).

3. A gives to B money to buy wheat for him, and he bought it and he put the wheat in a house which was uncovered, and it rains in, and the wheat became

rotten through the rain, B is bound to pay for it (Tur).

## CHAPTER 188.

1. A heathen cannot be appointed as agent, or he cannot appoint an Israelite as agent to any mission (B. M. 71).

2. The appointment of an agent can be legal, even by a man or a woman, even a married woman, when they are of full age, but cannot be legal by a deaf, dumb, or insane person or minor.

3. Therefore if a man sends his minor son to a storekeeper with a bottle and a half dollar in his hand, to buy a quarter's worth of oil, and to bring a quarter change, and the minor delivers the half dollar to the storekeeper, and the latter pours the oil in the bottle while in the minor's hand, and gives a quarter change to the minor, and the minor breaks the bottle and loses the quarter, and the sender claims the value of the half of a dollar from the storekeeper and he say that he should not send with the minor but with his employee and the minor was sent only to notify him that he needs the oil. If it was not expressly stated that he wants the article delivered through the minor, the storekeeper is liable to pay the 50 cents, but not for the bottle, because the sender risked the bottle before, on the way to the store. If he had expressly stated to send the article through



the minor the storekeeper is free from liability (B. B. 84).

4. If A says to B the 100 zus which I have by you either a loan or bailment, you send it to me through so and so, and B sent it through the same even the agent was a minor, if B wishes he may send it and he is free from any responsibility (B. M. 98).

5. When the agent violates the command of the sender, the mission is dissolved (Tur).

6. If an agent becomes damaged account the mission of the sender in his money the sender is not responsible.

## CHAPTER 189.

הלכות מקח וממכר

### THE LAW OF BUYING AND SELLING.

1. If A asks B how much will you give me your article, and B answers for a certain price, and they come to an understanding, they both can retract, even the conversation was in the presence of witnesses, it is not valid, until they make a settlement (Kinon). Each bargain according to the law of his settle, and afterward no one cannot retract even it was not witnesses thereby (B. M. 49).

## CHAPTER 190.

1. The settlement of real property can be made in four different directions: 1, money; 2, note; 3, tak-

ing possession; 4, form of agreement (chlipim; Kidushin 26).

2. If A sold a house to B, and gives him a deposit even one peruta (one cent U. S.) or the value of one peruta the house belongs to B, and not one of them can retract, even though the money was given on condition that it should be returned, the house is confirmed to B (Tur).

3. If A says to B give money to C, and my field will be confirmed to you at the time and B gives the money to C, A's field belongs to C (Kidushin 6).

4. It is an opinion if A says to B, here is 100 zus and your field should be confirmed to C, at the time B receives the money, the field belongs to C, when C is satisfied with this transaction (L. C.).

5. It is an opinion when A says to B give 100 zus to C, and my field shall be confirmed to him at the time when C receives the money, A's field is confirmed to him, when C is satisfied with the transaction (L. C.).

6. It is an opinion if A gives to B 100 zus, and says to him with my honor that you receive the money, my field shall be confirmed to you, and B is an honorable man, at the time he receives the money A's field is confirmed to him. (See Code 4, page 376.)

7. If it is a custom that a transaction shall not be settled with money alone, but an agreement should be written, the transaction cannot be effective until

the buyer gives the money and receives the agreement (Kidushin 26).

8. If the buyer makes a condition that the deal should be closed either by giving the money or by receiving the agreement, and the vendor receives the money on the same condition, the buyer has a right to retract from the transaction, before the agreement is written, but not the vendor. If the vendor makes a condition that the deal should be closed either by giving money or receive the agreement, and he receives the money on the same condition, the vendor has the right to retract before the agreement is written, but not the buyer (L. C.).

9. If A bought a field from B and gives an article as pledge for deposit of the bargain. The transaction is invalid, and each of them, when they wish, may retract (L. C. 8).

10. If A sold real property to B which is of the value of 1000 zus, and B gives him a part of the money, and the vendor demands the balance because he is anxious for money, even the balance is only one zus, the transaction is void, and even the buyer takes possession of it or receives an agreement, the vendor has the right to return the money which he received, either with cash or real property, from the seconds, which is therein, because as long as the buyer does not settle the balance, the field is not confirmed to him, and the full right is given to the vendor (L. C.).

11. If the vendor retracts, the buyer has the right to demand his money either in cash or a part of the real property from the first class which is therein (B. M. 77).

12. If the vendor is not anxious for the money, the whole field is confirmed to the buyer, and the rest of the money can be claimed like another debt (B. M. 77).

13. If A sold his field to B because she is in a bad condition even though A is anxious for the money, and he demands the same, the deal is valid, and no one can retract. The same rule applies in such case by personal property (L. C.).

14. It is an opinion that on the day which is set up to take title, the vendor must demand the money two times from the buyer, and when the buyer refuses to give the money, the deal can be destroyed the next day on the part which is unpaid. If on the same day the buyer settles the money, even it was demanded two times, or it was demanded only once, the deal cannot be destroyed (Tur).

15. If A sells to B an ox for 100 zus, and receives 50 zus deposit and the balance should be settled in 30 days, and when the time was due, the vendor demanded the money twice, but it was not collected the transaction is void, because the live ox cannot be divided in parts, and the vendor does not wish to be partner with him in the ox, if however the bargain is



such a thing that can be divided, the buyer is entitled to a part in the bargain for his deposit.

16. If A sells a field to B for 100 zus, and B gives him the money, and after he claims that he made an error in counting the money, and the vendor demands the balance, the deal is valid, and the error must be corrected even after many years. The same rule is either by real or personal property (Kidushin 47).

### CHAPTER 191.

1. When A writes to B on a paper or a leaf, my field is sold or gifted to you, and the same was delivered to B, the field is confirmed to him, even there is no witness thereby (Kudusen 26).

2. This rule applies only when A sold his field because it is in a bad condition, but when such settlement is made by transaction of another field, it cannot be confirmed until the buyer will give money for consideration (L. C.).

3. If there is a disagreement between the vendor and the vendee the vendee claims that he gave the money, and the vendor claims that he did not receive it, if it in such place which it is a custom to give the money and after write the Bill of Sale, the vendee is believed because it is written in the agreement that the vendor admitted that he received the money.

4. R sold a house to B and a condition was made that the deal shall take effect after thirty days, and

the settlement was made either by giving the money or by writing a note, and in the meantime the money was lost or the note was destroyed, if it was stipulated before that after thirty days shall take effect from now it is valid, if it is not stipulated so, it is invalid (Ramo).

## CHAPTER 192.

### POSSESSION OF REAL PROPERTY.

1. If A sold or gifted a house or a field to B, when B fences or breaks something in favor of the field, or the house, and this operation was successful this bargain is confirmed to him (B. B.).

2. The taking possession must be made in the presence of the vendor, if it is made in his absence, it is ineffective, except when the vendor commands to the vendee to go and take possession and confirms it or keys belonging to the house are delivered to him by the vendor then even in his absence it is effective (B. B. 52).

3. If the vendee either in a transaction of a field or a house prepared a place to sleep or set a table to eat, or put his wares or collected the fruit in the field it is confirmed to him (B. B. 53).

4. A sold to B ten fields in ten different countries, when B takes possession of one of them they are all confirmed to him, when payment is settled for all, if however the payment is only settled for a part of

them it is only confirmed to him for the value of the money received. If it was a gift it is all confirmed to him (Kidushin 27).

5. The same rule applies if the ten fields were hired, and when he takes possession of one, all are confirmed to him for the time of hiring, even if the rent is not received in advance (L. C.).

6. When a part of the bargain was as a sale and a part of it was hired when the buyer made a settlement (Kinion) either in the part of sale or in the hiring all the bargain is confirmed to him (L. C.).

7. When the buyer takes possession in a transaction of sale even without giving the money or writing the note in a place where it is a custom to pay a consideration and take possession afterwards when the vendor is not anxious for the money is effective (Tur).

## CHAPTER 193.

1. A sold to B uncut fruit when they are unripe the settlement of real property with giving the money or writing a note or taking possession of the real can be confirmed to B. If however the fruit is ripe and ready to be cut it is there two opinions if the settlement of real property or the settlement of personal property can be effective (Schwuath 43).

## CHAPTER 194.

1. A sold a field to a heathen, it cannot be confirmed to him with taking possession or by giving the money alone, until he writes the Bill of Sale. If an Israelite bought a field from a heathen, it must be confirmed by giving the money and writing a note.

## CHAPTER 195.

III  
FORM OF AGREEMENT.

III C

1. When A sells a real property to B (chlipin), the vendee may give a vessel and say to A, confirm this vessel instead of the one you sold to me or gave to me. When the vendor replaces the vessel, the real is confirmed to B, in any place where it is, even no money was given or possession was not taken, and no one can retract even there was no witness thereby but they admitted each to the other (B. M. 47).

2. This form of agreement must be made with a vessel and even it is not worth one peruta (one cent U. S.) it is effective (L. C.).

3. With a coin or food or a vessel which is forbidden to have benefit from it the form of agreement is ineffective (L. C.).

4. With the vessel which belongs to the vendor, the form of agreement is ineffective, but when another man confirms a vessel for this purpose to the



vendee even on condition that it shall be returned it is effective (L. C.).

5. It is an opinion if a transaction is made with the condition shall take effect after thirty days the form of agreement cannot be valid. Thereby except when it was expressed before "from now and after thirty days" (Nedarim 48).

6. Even the transaction was settled by a form of agreement so long they are busy in the transaction each one may withdraw from the agreement but when they stop the attention to the business no one can withdraw after one second (B. B. 114).

7. By other settlement (Kinion) no one may withdraw after the second (L. C. 86).

8. It is an opinion if it was stipulated at the time of the form of agreement that no one shall withdraw even they attend in the same business they may not retract after the second.

9. Even the vendor does not keep the whole vessel in his hand nor a part of it, and the rest is in the vendee's hand it is valid, but he must keep there three fingers long in the vessel, if he keeps less than three fingers he must keep it strong so that the vendee shall not be able to snatch it from him (L. C. 7).

10. The same settlement which is legal by selling real property the same settlement must be made, when the same is hired or borrowed (L. C.).

11. It is an opinion that a form of agreement

cannot be valid when the real property is hired (Kidushin 67).

12. Rent or a pledge cannot be confirmed with the same money that was given before as a loan (Tur).

## CHAPTER 196.

1. A heathen servant can be confirmed to the vendee either by giving the money or writing a note or with services rendered, or by a form of agreement (L. C. 22).

2. The services rendered must be attend in the owner's personal body, *e. g.*, if he unties or puts on his shoes, or dress or undress the lord, or raises him up, it is an opinion when the lord raises up the servant is confirmed to him (L. C.).

3. When outside services were rendered by the servant in the welfare of the owner, *e. g.*, he sewed a coat for him, it is two opinions if it is valid or invalid (Tur).

4. When the lord pulled the servant to him he is confirmed to him. If he call him and he come in, it is not confirmed to him, except when the servant is a minor, then he can be confirmed to him (Kidushin 22).

## CHAPTER 197.

1. The settlement (Kinion) of cattle either horses or cows, can be made by pulling or raising up, then

the cattle can be confirmed to the buyer in each place, where the transaction is made but the settlement of removing can be only valid in a alley or in a yard which it belongs to both, but it cannot be valid in a public highway or in a yard which does not belong to one of them (L. C. 22).

2. The settlement of cattle removing can be made in a different way. Moving or riding on her or calling her and she come to him or he smite her with a stick and she run before him, and at the time she moves her hand or feet the deal is closed (L. C.).

3. The settlement must be done in presence of the vendor. If it is done in his absence, it is valid when he command before that he shall go and remove and confirm by the removing (L. C.).

4. A sold to B a flock of sheep or a herd of cattle or give to him as gift, when the leader of the flock is delivered to B (one of them which goes in the front) the whole flock is confirmed to B and even A not say to him "Move and confirm." If he move the flock even in his absence the deal is closed because delivering of the leader is considered as a command "Move and confirm" (B. K. 52).

5. If A not deliver the leader to B and he made only the settlement of removing one of the cattle the one is confirmed but not the others if the settlement was made with the delivering. When they are all tied with one strap and B settles the whole amount

all is confirmed to him if only a part is settled it is only confirmed to him the value of the money paid. (See Chap. 192.)

6. A sold to B an unbound book and delivered half of it to him and B removed or raised the same in the absence of A it is not confirmed until A must say to him go and confirm it (Ramo).

7. When A say to B remove the cattle and shall be confirmed to you after thirty days and B removes the same cannot be confirmed to him except when it was stated at the time of the form of agreement "from now and after thirty days" (Kesuboth 82).

## CHAPTER 198.

1. By the law of the Torah, the giving of the money for the article can be considered as a title to the vendee, but the rabbinical enactment that in each bargain must be made either raising or removing by such article which it is impossible to raise, *e. g.*, if one collected wood and made a big bundle of it, which it is impossible to raise, this cannot be settled by removing because it is possible to unbind it, and raise up each piece separately. If, however the bargain was a sack of nuts or almonds or pepper which it is impossible to raise each one separately then must be confirmed by removing (B. M. 47).

2. The settlement of raising it is two opinions one holding that must be raised up three *tfochim*



high (12 fingers) and the other holds that one thefach (4 fingers) is enough (Tur).

3. The settlement of removing is legal only when the article is all removed from its first place (B. B. 75).

4. If the article is such kind which it is not customary to raise up and the vendee made the settlement with the raising it is valid (B. B. 86).

5. For what reason the rabbinical enactment that the settlement of giving money alone shall not be sufficient to become title of the bargain because perhaps the vendee will give the money for the article and before he has time to take it home, the article gets lost by accident, or by fire, and the vendor will not care to save it because he had already his money, therefore the rabbinical enactment that the article shall be in the possession of the vendor and he shall take good care to save it.

6. Therefore if the house in which the article is lying, is hired to the vendor, even the vendee not live in the same house with the giving of the money alone the article is confirmed to the vendee, because the vendor will take care to save his articles (B. M. 47).

7. It is an opinion if A hired an article of personal property from B, it can be settled with the giving of the money because the property belongs to the vendor, he will take care of it if an accident happens (L. C.).

8. If A pays for article to B and A retracts and B notifies A to take the money and afterward the money was stolen or lost, he is not responsible. If, however, B retracts and he says to A to take the money and the money gets lost or stolen, even by accident, B is responsible until he receives the cursing of the blame of honor. Afterward when he say to A "take the money," if it is stolen or lost, if the same money is in existence, he is not responsible. If, however, B spent the money, and appoint other money instead of it, and notify A to take the money, it is two opinions if B is not bound to pay again or if he is responsible even for accident until the money will arrive in A's possession (Tur).

## CHAPTER 199.

1. Sometimes the vendee can become title of the bargain with the giving of the money alone, *e. g.*, A say to B, sold to me your article for the money which I keep in my hand, and it is uncertain how much there is in his hand, and B received it and count it, in such deal can be settled with the receiving of the money alone, because it is a matter which seldom happens the Rabinical in such case no enactment.

1-a. The same rule applied when A sold to B personal property for 100 zus and B takes possession of them and he is bound to pay the 100 zus and afterward B has other personal property for the same

value and A says, give me the article for my money, and B was satisfied the personal property of A is confirmed to B in every place where they lay. And no one of them can retract because such deal seldom happens and in such case no enactment by the Rabinical and it is considered as exchange (B. M. 46).

2. If, however, the buyer has a debt from another business by the vendor and the buyer made a motion that he shall sell to him his personal property for the amount of the debt and they both was satisfied with the motion the personal property cannot be confirmed to the buyer (Kidushin 6).

3. In four times in the year a bargain can be confirmed with the receiving of the money. 1. The day before last day of the Tabernacle Feast. 2. The day before the first day of Passover. 3. The day before the Weeks Feast. 4. The day before New Year, and even if the vendor receive one diner deposit of an ox which is worth 100 denarin to slaughter for the purpose to prepare meat for the public, and the vendor retracts because the buyer not settled the whole amount, he can be forced to slaughter the ox and give the meat to the buyer. Therefore, if the ox died the buyer loses the deposit, but not more. (See Chap. 191; Chulin 83.)

4. Orphan or their guardian which sold personal property belonging to the orphan, and the buyer takes title of it with moving the article, and not give them

the money and the article increases in price, the orphan may retract because by such case the Rabbinical no enactment and the law of the Torah prevail (Gitin 52).

## CHAPTER 200.

1. If the personal property was laying in the yard of the buyer which is guarded with his consent or he stands thereby at the same time the vendor close the deal the article is confirmed to the buyer when the price is set up (B. B. 85).

2. If the article was lying in possession of the vendor or was entrusted to a bailee the buyer must then make a settlement either by raising or by moving the article from his place (L. C.).

3. The vassals of the buyer can confirm to him the bargain where he has permission to leave them there, and when the personal property was put in the vassals which belong to the buyer it is confirmed to him (L. C.).

4. If the vessels was standing in a public highway and the personal property was lying in them, it cannot be confirmed because it is forbidden to stand vessels in a public highway (L. C.).

5. If the vessels of the buyer was standing in the possession of the vendor, it can be confirmed to him when the vendor say to him "Confirm the article which is in the vessels" (L. C.).



6. The settlement of moving can be valid even in the vessels of the vendor, *e. g.*, if the vendor measures all in his measure and the buyer move the measure in his presence it is confirmed to him even if the vendor not command to him, move the vessel and confirm what it is in (L. C.).

7. No settlement can be valid except when a price was set up before the measure. If, however, there is not set a price, it cannot be confirmed because they both cannot be depend may be they will be unsatisfactory with the price (L. C. 88).

8. If A takes a vessel from the factory for approval and an accident happens to the vessel, if the price is set up, he is bound to pay for it because therefore the price is set up, the vessel is in his possession at the time A rises it up and the vendor cannot retract. When A raised it up with the idea to confirm it, and the buyer like the article, if, however, the vendor dislikes the article and he look for customers to sell them it is in his possession until the vendor set up the price and afterward the buyer will raise it up (L. C. 88).

9. If the buyer refuses the article, and before it is returned to the vendor, it is stolen or lost, there are two opinions whether he is liable or not (L. C.).

10. The settlement of raising or moving can be done either by himself either by his command to an agent shall raise or move it for him (B. M. 9).

## CHAPTER 201.

1. If A sold an article to B and they set up a price and B sealed the article with his seal shall not be exchange, even if A didn't receive any money, each one who retracts afterward must received the cursing of promises and not fulfilled. If it is a custom in the locality that the putting of the seal shall be considered as a settlement, the bargain is confirmed to the buyer and no one can retract and the buyer is bound to give the money to the vendor. When the putting of the seal was in the presence of the vendor, or the latter commands to him he shall put the seal of the article (B. M. 84).

2. And everything which it is a custom by the merchants that is considered as settlement, *e. g.*, the buyer gives one cent to the vendor or the buyer shakes hands with the vendor or delivers the keys, it is considered as settlement.

## CHAPTER 202.

1. If A sold to B real and personal property at once, when B made a settlement in the real property, the personal is confirmed to B also, with the same settlement, either they both were bargained or a gift or the personal was sold and the real was a gift or vice versa. It is an opinion even the real property was hired and the personal was sold (Kidushin 27).

2. When the vessel belongs to A and the flowers which are planted in belongs to B, if A sold the vessel to B, it must be confirmed by moving as the settlement of personal property. If B sold the flowers to A, A must take possession in the flowers as a settlement of real (Gitin 22).

3. If the flowers and vessel belong to A and A sold them to B, and he takes possession in the vessel with the idea to confirm the bargain of the flowers even the vessel is not confirmed to him until he must move the vessel, if he takes possession of the flowers, the vessel also is confirmed to him (L. C.).

## CHAPTER 203.

1. Every personal or real property can be confirmed to the buyer by a form of agreement (chlipin) except if A sold coin to B this transaction cannot be settled with a form of agreement and the same coin or fruit cannot be used for a (Kinion) form of agreement (B. M. 44).

2. Promises cannot be settled with a form of agreement, *e. g.*, A promised that he will go for B to a certain place, and they make a form of agreement this cannot bind A to fulfill this promise because no settlement can be made of a thing which is inanimate (B. B. 3).

3. A has a cow and B has an ass and they appraise each one separately, and they decide to ex-

change one for another. When A makes a settlement with moving (*me sicho*) by the ass, the cow is confirmed to B in every place where she is and no one can retract (*Kidushin* 28).

4. If A exchange an ass for a cow and sheep with B, and A makes a settlement with moving (*me sicho*) in the cow and not move the sheep, the whole bargain cannot be confirmed to A because A's settlement is not finished.

5. It is an opinion that this rule applies only in the case of an ass because it is impossible to dissolve it in parts. If, however, A exchange with B a cow and a sheep for a ton of wheat and make a settlement in the cow, but not in the sheep, it is confirmed to him, the value of the cow in the wheat (*B. M.* 47).

6. The settlement of coin when it is not in his possession can be done either through the possession of the real property which the coin is laying, *e. g.*, he shall buy or hire the place where the coin is lying. And he shall make a settlement in the real, and when the money is in existence, *e. g.*, they was in trust to a bailee and he not deny it. The coin can be confirmed to the buyer (*L. C.*).

7. If, however, A has a debt by B and sold to C, real property and include in them bargain the debt, the debt cannot be confirmed to him, but A may transferred it by the rule of three parties. (See Chap. 126, Code 2; *L. C.*).



8. If A exchanges with B, a real for a real or personal for personal, or real for personal, when one made a settlement in one bargain, the other is bound to give the exchange (L. C.).

## CHAPTER 204.

1. If A gives money even a deposit to B for a bargain, and before A makes a settlement of moving (me sicho), either B retracts or A retracts, the retractor must receive the cursing for the promises and not fulfilled (B. M. 44).

2. If A pay for the bargain and an accident happens to the bargain and A claimed either to give me my bargain or to return to me the money, even it is witnesses that it is lost by accident and it was impossible for the vendor to save it, he must return the money (Tur).

3. A owed 100 zus to B and B say to A, the personal article I will sell to you for the 100 zus, and A gives the 100 zus and B receives the money and claim the money was received on account of the debt and the article I will not give to you. The right is with B, and B is free even from the cursing of promises and not fulfilled. If A give others 100 zus and say, give me the bargain, then B must give him the bargain or receive the cursing for the promise not fulfilled (B. Y.).

## CHAPTER 205.

1. If A was forced by duress to sell his real or his personal property, and he received the money and even not count them, the deal is effective because account his anxious he confirm the bargain. Even the receiving of the money was not in the presence of witness, only he admitted that he received, it is an opinion that the receiving of the money must be in presence of a witness and if the vendor admitted that he received the money, it is not valid and he can state after that the admission was on account of duress (B. B. 48).

2. If the buyer give a note for the value of the bargain, it is two opinions whether it is valid or not (Ramo).

3. In such force transaction, it is advisable to the vendor to deliver a notification in the presence of two witnesses, before he closes the transaction, and they must know the reason of the force, and they have the right to write a notification. Then the transaction must be void, even the buyer take possession many years of the bargain, it must be taken away from him and the money must be returned to the vendee (B. B. 48).

4. The same witness of the notification has the right to sign the Bill of Sale after that, even the vendor stated in the presence of witnesses that he sell the bargain with his consent. The notification is

effective, because he was forced to say so like he was forced to sell (L. C.).

5. If the vendor admitted that he received the money after the notification is delivered, he is not bound to return it because he was forced to admit the same like he was forced to the sale. If, however, the witness see the counting of the money, he is bound to return it (L. C.).

6. If the witness of the sale testifies that he nulled the notification, the same is void. If, however, it was written in the notification, that every null which I will say afterward of the notification shall be null, the notification is effective (Erechin 21).

7. The forcing must be such which comes through another person and the force can be either by smite or hanging or fear of a thing which it is in his power to do so, like it is happen. A hired a field or a wine garden to B for a certain time of ten years, and A has no legal evidence that the field is hired to B. Then B after using the field three years, said to A, "sell to me the field and if you refuse it, I will hide the agreement of hiring and I will claim that I bought the said field and I lose my deed. And the sages decide that it is considered like a force. Therefore, if A claims in Court for the return of the field, and B denies it and claims that the field is his and A sold the field to B who has denied, and before he sold, A delivered a notification to the witness that he sold the field on

account of force, the transaction is void because he has witness that he was forced and they know that B denied and they see the notification (B. B. 40).

8. The force must be such that comes through another person. If the force come through himself, *e. g.*, he was anxious for the money and on account them he sold the bargain, the deal is valid (L. C.).

9. If he was forced by a robber to give cash money and because he has no money, he sold the bargain, the deal is valid (L. C.). If however A was forced to buy a bargain, the transaction is void (Ramo).

## CHAPTER 206.

1. If A was promised by written option by B for a certain length of time that he will sell him the field for 100 zus, and afterward he sold the same field to C for the same price, the bargain belongs to B. If, however, A becomes a higher price for the field, it belongs to C if it was written in option for any price it belongs to B (E. Z. 72).

2. If it was stipulated in the option that I will sell the field to B according to the appraising of the Court of three judges, and two judges declare that it is worth 100 zus, and one stated it is worth 200 zus, it must be given to him at the price 100 zus. If it was stipulated according to the appraising of three judges, it must be a unanimous verdict of all the three. The same rule applies if he say, shall appraise four,



then all four must unanimously agree. If the three or the four appraise it, and the vendor claim shall other court reappraise, he cannot be heard because it was a form of agreement that he is should be satisfied with the first appraisal (L. C.).

## CHAPTER 207.

1. If A sold a field or personal property to B and condition was made in the transaction either by the vendee or vendor legally (see Code 4, Chap. 38) if the same condition was fulfilled, the bargain is confirmed to the vendee. If it was violated, the transaction is void. It is an opinion that a settlement on the bargain must be made before the condition is fulfilled. If, however, no settlement (Kinion) was made, even the condition was fulfilled, the bargain is not confirmed because promises are not legal except when it was said from now and made a (Kinion) settlement (B. M. 94).

2. If A sold his field and stipulated at the time of the sale, because he moves to a certain place, or because it was a draught time and he sold it to B for this purpose to buy for the money wheat it is considered as he sold it on condition therefore if rain comes afterward, or wheat is imported and it is decreased the price, or an accident happens and he cannot go to the certain place or he cannot go to that place on account of danger or sickness there or he

cannot become wheat, the transaction must be returned and the vendor must return the money because he stipulated that he sold it on account of them and it is not fulfilled (Kidushin 50; Kesuboth 97).

3. If, however, the field was sold without specifying, even if he has it in his mind, that he sold it on account of this purpose, and even it is proven that he sold it on account of them, and this was undone, he cannot retract because it was not stipulated and the words which it was thought, it is not effective even if he said before he sold it, that he sold on account of this purpose, but he did not say at the time of the sale (L. C.).

4. If A sold an article to B, and made a condition that he shall sell the same to C in a certain time, if B sold it to C at the same time, the transaction is effective. If B violates the condition, the transaction is void. The same rule applies if A made a condition that it shall be returned to him, when he will become money, if he fulfilled the condition, the transaction is effective (Gitin 84).

5. If A sold a field to B, and a condition was made that he shall return the field when A will become money, B must return the field when A offer the money. Therefore B is forbidden to use the fruit on account of usury, because the money is considered like a loan by him (B. M. 65).

6. If A sold a field to B without specifying any

condition, and B say from his own good will when you will become money, bring it to me and I will return to you the field, the condition must be fulfilled and B can use the fruit because B made himself bound in the condition. And when A will bring the money at the time the field will belong to him. It happened a certain woman has appointed an agent to buy for her a field from B, her relative, and before the deal was closed, B say to the agent, if I will become money, shall the woman return to me the field, and the agent answer, You and the woman are relatives, and it is understood that she will return to you the field. This case was brought before the sages, and they decide that the transaction is void because the vendor should not depend on the promises of the agent, and therefore, he not confirm the field to the buyer (B. M. 67).

7. If A loaned 100 zus to B and B gave as a pledge a field which is worth 300 zus, and B promised if he not pay until a certain time, the field shall belong to A, the promise is not effective, because everything which depends on the will of the giver, he not confirmed because he thinks he will be able to pay and he is not able (L. C. 65).

8. If, however, it was stipulated in a case he will fail to pay the loan, the field shall belong to A, from now this is effective (L. C.).

9. If A gives a deposit of a bargain to B, and it

was stipulated in case I retract shall the deposit be lost, and if B will retract, shall he pay a double amount for the deposit to A. If A retracts he lost the deposit. If B retracts, he does not bond to give double the amount of the deposit, but B must give for the value of the deposit a part of the bargain. It is an opinion that even if A retracts, the deposit must be returned, either it is given to the vendor, or either it is deposited by a bailee (B. M. 48).

10. If A pay a part of his debt to B and the note is deposited by bailee and was promised by the borrower if he will fail to pay the balance, the note shall be given to the creditor and he shall have the right to collect the whole amount, and the time is expires and the borrower fails to pay the balance. The note cannot be given to the creditor (B. B. 168).

11. Every promise which is promised and condition is made even in the presence of witness, or a note is written if you will do so, I will give you 100 zus or I will buy for you a house, and if you will not do, I will not give you, even when he do so, he is not bound to give it. Because promises which be depend on condition is illegal (L. C. 66).

12. It is an opinion that it is three different laws in the case of promises everything which is not in his hand, and depend on the consent of the other, *e. g.*, A command to B shall he buy wine for him from a certain place, if you will not buy, you will be bound



to pay me 100 zus. That is not effective, because it is not in his power to buy, perhaps they refuse to sell to him the wine. 2. If it is in his power, *e. g.*, A received a field for farm work and a condition was made, if he fails to farm the field, he shall pay a certain amount damages. It is effective, because the promises is not too much. If, however, the promises was too much, *e. g.*, if he will fail to farm the field, he will pay 1,000 zus, it is ineffective, because the promises are too unreasonable (Ramo).

13. If it is such a kind which is not in the power of the promisor or in the power of the others to fulfill, *e. g.*, like the player of the cards, because he don't know if he will win or lose, this is effective and the money belongs to the winner. When they play with cash and cash is laid on the table and the table belongs to them both, if however it was played on credit, and one lost, the credit cannot be collected. Even the loser put a pledge for the credit it must be returned to him (Ramo).

14. If one obligate himself to another for an indefinite sum. (See Code 1, Chap. 60, page 100.)

## CHAPTER 208.

1. A transaction which is made by forbidden command, *e. g.*, the price of the article was overcharged, because it was taken on credit and the buyer take title with a form of agreement or another settle-

ment the bargain is effective and the price must be fixed on the right side and no one can retract. If the same bargain becomes decreased in price the buyer has the right to retract (B. M. 65).

## CHAPTER 209.

1. If A sold to B an article which weight is uncertain but the sort is certain, *e. g.*, a cellar of wine, bag of figs or this pile of wheat I sell to you for the price, the transaction is effective even if it is more or less weight or measure according to the estimate, and it can be claimed for overcharge according to the market price (B. B. 95).

2. If, however, A say everything which is in my house or in my box or in my bag is sold to you for them price, and the buyer settled the bargain by moving (me sicho) the transaction is void, because the buyer not depend of the bargain because he not know what is in, may be straw or gold, and it looks like a joke (B. B. 95).

3. A sold to B for 10 denarin wheat and it was not set up how much bushel A shall give, A must give for the sum according to the market price prevailing at the time of receiving the money (B. M. 63).

4. No man can confirm to the other an article which does not exist in the world, even when it comes into the world, the contract is void and everyone can withdraw (Yavomath 93, Kidushin 62).

5. If A say to B the fruit which my field or my tree will grow, or the calf which my cow will bear, I sell to you, even the cow was pregnant, and the tree was blooming, the transaction is void, and everyone can withdraw even after the tree or the field gives the fruit, and the cow bore the calf (L. C.).

6. If the buyer seized the articles after they come into the world, it cannot take away from him (B. M. 66, B. B. 147).

7. If, however, he sold the tree for the purpose of her fruit, or the cow for her calf, it is effective, because it is considered like he has a part in the cow or in the tree and no one can withdraw (Yavomath 93, Kidushin 62, B. B. 147).

8. The same rule applies if A sold his field to B and a condition was made that a part of the fruit shall belong to C, it is not effective and C cannot receive no part of the fruit (B. B. 148).

9. If A left a part of the fruit for himself, it belongs to him because that is understood that he left a place for the fruit in the tree, even it was not stipulated, and even B sold the field to another, the part which was left by the vendor cannot be sold, and he can receive his part forever. If at the time, was stated that he left the part so long the field is in his hand, when B sold the field, A lost his part, even B buy again the field, A cannot claim his share, if A die his heirs cannot claim his part, except when it was

stated in the agreement that the left for him and for his heirs (B. B. 148).

10. Even B is bound to give a part of the fruit to A, if B refused to give the part the transaction of the bargain cannot be dissolved. But A can claim for it, if, however, A made a condition that he shall receive a part of his fruit, when A refuses to give the part, the transaction must be void (Tur).

11. If A sold the tree to B and the fruit to C, the bargain with B is valid and the tree and her fruit belongs to B, and C has nothing (Tur).

12. If A say the tree is confirmed to B without the fruit, he left for himself the place of the twig, and to B belongs only the roots, when it becomes dry (L. C.).

## CHAPTER 210.

1. If A confirms an article to a strange unborn child even he is in the womb of a woman, even if he say that he shall confirm it when he will be born, it is not effective. If, however, he confirms to his unborn son which is in womb of his wife, even he not stated when he will be born, it is confirmed to him (B. B. 141).

2. It is an opinion that the above rule applies only when the gift was given by a man which lays on the deathbed but if the gift is given by a healthy person it is ineffective (Tur).



3. If a gift is given to his unborn grandson the law as a stranger is prevail (Ramo).

## CHAPTER 211.

1. An article which is not in the possession of the giver, even after the article comes unto his possession cannot be confirmed, *e. g.*, A say to B, the estate which I will inherit from my father, I will sell to you, or much my net will catch fish, shall be sold to you or the field which I will buy, shall be sold to you, the transaction is void (B. M. 15).

2. If, however, the father was unconscious and every minute he is apt to die and the son sold some of the real or personal for the expenditures of the burial, and if he will wait with the sale until the father will die it will be an insult for the father. Therefore, it was an enactment of the Rabinical that in such case, the transaction shall be legal (L. C.).

3. The same rule apply if the netter is a poor man and he say what I will catch in my net today shall be sold to you, the transaction is valid, account he shall be able to make a living (L. C.).

4. If A sold his father's articles for the purpose of burial expense and A died before, and afterward the father died, B the son of A may recover the articles from the vendee, because he inherits the estate from his grandfather, and his father A sold an

article which is not in his possession, and even he need not to return the money received for it (Tur).

5. It is an opinion when B borrows money from his father A, and B sold his fields to C, and B and A died, G the son of B has the right to collect from the convey property, the loan of B, because he came from power of A, his grandfather, and he inherits from him (Tur).

6. If a father made a will that the field shall belong to his son after his death, then the ground belongs to the son from the date of the agreement, and the fruit belongs to the father until he died. The son is forbidden to sell the fruit as long the father lives, but he may sell the field that he shall take title for it from now and the fruit will belong to him when the father will die. And even the son dies before the father, the transaction is valid, because at the time he received the gift, it is considered that he has title in the field, and the fruit which belongs to the father cannot prevent the transaction of the sale (B. B. 136).

7. A gives a field as a gift to B and included among it Denarim or personal property, if the same was at the time of the transaction in A's possession, it may be confirmed to B with the same settlement (Kinion). Therefore B must prove that the Denarim or the personal property was at the time in A's possession (Kidushin 27).

8. A has articles in storage by B. A has the right

to sell or to give the same because a bailment is considered like it is in the possession of the bailor and may be believed that is in existence. If, however, B denies the articles, then A cannot confirm it because it is considered as A lost (B. K. 70).

9. If A has a loan by B, because the loan is giving for the purpose of spending therefore A cannot transfer the same to B through a sale or gift, transaction, nor through the ceremony of three parties. (See Code 2, Chapter 126, p. 370.) Or if it was a loan with a note, it can be confirmed through delivery and writing a note, because it is a thing which may deliver and confirm the obligation (Tur).

## CHAPTER 212.

1. The bargain which it is transferred either by a sale or by a gift transaction must be animate if however it is inanimate it cannot be confirmed, therefore, when A confirms to B the eating of the fruit from the tree or the residence in the house. This is ineffective until A must confirm to B a title in the house to live there, or in the tree, to eat her fruit (B. B. 147).

2. The same rule applies if A sells to B the air of his shanty or yard, it is not effective, except when A confirms to B the ground of the yard for the use to stretch beams, etc. (Tur).

3. When A sold his field for a certain length of time to B, the sale is valid and the buyer can use the ground according to his will and can eat the fruit of the field for the certain time, and when the time expires the field must be recover to A (Rambam).

4. What is the difference between the sale a field for certain length of time, or when the field is sold for the use of the fruit, the buyer for the fruit is forbidden to change the face of the ground, to build or destroy, but the buyer for a certain time is permitted to build or destroy as like the buyer forever (L. C.).

5. What is the difference between a field when it is sold for the use of the fruit, or when it is sold the fruit from the field, the latter is forbidden to even visit the field only when the fruit is ready, but the vendor has the right to use the field according to his will, when a field is sold for the use of the fruit, the vendor is even forbidden to visit the field without the consent of the buyer, and the latter can use the field according to his will (L. C.).

6. What is the difference between a buyer which buys a field for the use of fruit or when one hires the field from the other, the buyer is permitted to plant or to sow in any time he wish, or to leave, it vacant, but the hirer must only sow according to the custom of the locality (L. C.).



## CHAPTER 213.

1. A sold to B the fruit of his apiary or his beehive, the transaction is valid, and it is not considered as an article which is not in existence, in the world (see Chap. 212), because A, not sell the birds which are unborn, or the honey which will come to the apiary, but he sells the apiary for its fruit or the beehive for its honey, like he sell a well for the fishes, which he will capture or the tree for its fruit (B. B. 80).

2. The eggs or the young pigeons, before they can fly, does not belong to the buyer, because it is a command (Deuteronomy 227). You shall not take the children and the mother together. Therefore, a vendor which he wish to confirm the pigeons and the eggs to a buyer, shall he knock off the nest until the mother sets off and raise it up, and afterward, he may confirm it to the buyer, with one of the settlement of personal property (Chulm 141).

## CHAPTER 214.

1. A sold a house to B and was not specified about the rest of the building which are made for the convenience of the house, if they included in the bargain or not. The porch which is around the house even she is open to the house when she contain the long and wide four yards, not belongs to the buyer, and

the cloth room which it is inside in the house, does not belong to the buyer, and the roof which has a battlement made high Ten Tfochim (40 finger) and four yards wide and when it is inside a well either build or dig even it is written in the deed the around borders, it is not belonged to the buyer, until the all must be mentioned each one separately at the time of the closing of the title, and the vendor must buy a road by the vendee to go to his well (B. B. 64).

2. If the vendor specifies that he sold the house without the well, the vendor may receive the road free (L. C.).

3. A sold a well to B, the latter need not to buy a road to the well, because it is included among the bargain, and he can go in the house to the well and draw water (L. C.).

4. A sold a house to B and was not written in the deed, from the deep of the ground to the Heaven. B has no right to use the air of the roof or in the deep of the earth, either in the house or in the yard. It belongs to him only to the end of the walls and B is forbidden to build in the air or to dig some subway under the ground. But A is permitted to build in the air a building of beams, shall not be founded on the walls which he sold to B, and if he wish he can use or dig the under ground but he shall not damage the house of B (Tur).

5. It is an opinion that A is forbidden to use the

underground because he shall not damage the house, but if B dig subways in the underground, it belongs to A (L. C.).

6. A sold a shanty to B, even it was not written in the deed from the deep of the ground to the Heaven, because the shanty is apt to be build. B is entitled to use in the air, the height of house which it is the height of a man with a bundle on his hat, and he shall not need to bow (B. B. 7).

7. It is an opinion that in a field or wine garden all the air belongs to the buyer because this places do not accustomed for building purposes but the underground does not belong to the buyer except when it was mentioned in the deed. Another opinion holds that the air and the underground belongs to the buyer; even it was not mentioned in the deed (N. J.).

8. If A sold a house to B, and it was not written in the deed from the deep of the ground to the Heaven and the house falls down the buyer when he rebuilds must make the same height as it was before (Tur).

9. When the vendor has a building of beams over this house and it falls down the same can be rebuilt. Even it is written in the deed to the Heaven. If the house falls down it is a doubt in the law if the vendor may rebuild or not (Smah).

10. If the vendor sells the same building which

is over the house to another, the buyer is forbidden to rebuild after it falls down (Tur).

11. However if one buys a floor which is built of a house, and the same floor falls down, it can be rebuilt. Because the house is obligated to the floor (Tur).

12. If A sold a house to B and made a condition that the roof which has a battlement step ten tfochim by four yards shall belong to him, it belongs to him even if he wish to stretch from it beams in the yard, if it falls down, he is permitted to rebuild it (B. B. 83).

13. A has a house in the front and a house in the rear and at once he transfers those two houses to two persons either by transaction of a sale or gift either the front was a gift and the rear was sold the rear man must buy a road to pass to the front but if the rear was given as gift and the front was sold the rear man needs not to buy a road, because he left a road for him in the front because the giver gives a gift with a good will (B. B. 65).

14. When the transaction of the rear man was before either by sale or by gift and after he transferred to the front man the rear man win the right of the road and no one may recover from him (L. C.).

15. When A sold a house without mentioning what belongs to it every use which it is nails such as doors, bars or locks and the grand mill which is



cleaved and the stuff which is cemented it belongs to the buyer, but everything which is removable it not belongs to the buyer except when it was stated at the time of the transaction the house and everything which is in I sell to you (L. C.).

16. When A says to B one house from my houses I give you as a gift and he has many big and small, B may only receive the smaller one, if one of the houses fall down A can claim that is the one which belongs to him, because everything which it is a doubt either in law either in the mind of the giving it must be decided in favor of the owner of the ground (Menachos 108).

17. When A sold a place to B to build a house or a stable and it was not mentioned how wide and long, A must give four yards by six if it was stated a big house must be given 8 x 10.

18. And the same rule applies when one undertakes to build a house, it must be made 4 x 6 or if a yard must be 10 x 12 and the height of the house must be a half of the width and the length, *e. g.*, the length was 60 feet and the width was 40 the height must be 50 feet (B. B. 98).

## CHAPTER 215.

1. A sold to B a yard without mentioning all which is included therein. The walls and the subways and all the house outside or inside, and the

stores which they open to the yard, all this belongs to B. But the personal property which is lying in the yard belongs to A, except when A says at the time of the bargain, the yard and everything which is in I sell to you, even then, if it is in a bath house or a house which manufactured wine, all does not belong to B (B. B. 67).

2. The above rule must be decided according to the custom of the locality, and in every transaction in business must be declared accordingly to the language and the custom of the same locality (B. B. 77).

## CHAPTER 216.

1. A sold a field to B, and it was in fig trees and A make a condition that a certain fig tree shall not belong to B. It must be investigated if this tree is the best one, the tree does not belong to the buyer and the rest belongs to him. If this tree is a bad one, even the rest of the fig trees do not belong to B (B. B. 61).

2. If A sold to B three trees, even if they were small ones, the ground under or around them belongs to the buyer and no one of them may plant there without the consent of the other, but the ground between the three may be planted by the buyer, and when the tree becomes dry or cut, the ground belongs to B and he can plant it again (B. B. 81).

3. If only two trees were sold to B, the ground

does not belong to him, and therefore when the tree becomes dry or cut, the buyer has nothing to do in the field (L. C.).

## CHAPTER 217.

1. If A sold to B a place to make a fountain to water the field, A must give one yard long and two yards wide ground, and one yard on each side for her sides (B. B. 99).

2. If it was sold to water with a pipe, it must be given ground one yard long and one yard wide, and half yard for the sides. This ground may be planted by A but not sow (L. C.).

3. If the sides become spoiled, the owner of the fountain may fix with the dust of the same field, because for those purpose, he permitted that a fountain shall be in his field (L. C.).

4. When A sold a place for a road to build, and was not mentioning how much the width or length shall be; if it is a road for one person, he must receive two and a half yards wide, shall be possible for an ass with his load to stand in the length of the way, if it is a way between one city to another, he must receive eight yards in the width, and when it is a public way, he must receive sixteen yards. If it was for a standing place, it must be given the length and the width as which can be planted four gallon seats (B. B. 101).

5. When A sold a place to B, to make a tomb or mausoleum or undertake to build the same he must build a subway four by six yard and must open in her eight grab, three on one side and three in the other side and two in the west side. Each grave must be four yards long and six tfochim wide, and the height, seven tfochim. Between each grave on the sides is one yard and a half, and between the middle is two yards between each other (B. B. 100).

6. If one sold his grave which was ready for himself, when he died the family has the right to bury him in the same grave, but they must return the value of the grave to the buyer (L. C.).

## CHAPTER 218.

1. If A say to B, the length of a ton seeds ground, I sell to you and it was in them such holes or rocks which they deep or high ten tfochim, they cannot be included in the measuring in the bargain because no man gives his money for one field and shall look like two fields, and the holes or the rocks belong to the buyer without payment (B. B. 102).

2. But the buyer cannot refuse the bargain on account of them, when they do not pass over the whole length of the field, and it is possible for the flower to flow without stopping (Ramo).

3. If the holes or the rocks are less than ten tfochim, even if they are full of water, they must be



included in the measure, when the length was only four gallon seat long if it is more it is not included in the measure (L. C.).

4. If A says a measure of a ton of seeds, I sell to you, by the measuring of a cord if it was more a small piece, it must be returned, if it was less it must be deducted from the price.

5. The added real which is contained in the length which it is necessary nine gallon seeds must be returned, if it is less, the buyer must return the money for them. If the added real was next to another field which belongs to the vendor, the same can be returned, because the vendor can elevate to the other field (L. C.).

6. If A sold a field to B, which the latter knows, her borders and her measure even A say that she contained 200 square feet and she is only 150 feet, no claim can be made because the buyer knows the field and he was satisfactory, and what A says that she contained 200 feet, means it is a good as another which contained 200 feet (Tur).

## CHAPTER 219.

1. If A says to B, the field I sell to you even if he not mark in the deed, the borders of the field, the whole field belongs to B, so long as she is not divided with another border (B. B. 62).

## CHAPTER 220.

1. A sold a cargo to B and did not mention about the rest of the use articles if they were included in the bargain or not. The mast pole and the stoppers hold oars, step and the tanks to keep water for drinking, all belongs to B. But the small bottle which they swim to the side, either it is made for the purpose to catch fish and the servant which they survey or the sacks and the merchandise which it is in this all does not belong to B (B. B. 73).

2. A sold to B a carriage and no was specifying about the asses if they were included among the bargain or not, the asses not belong to B except when they were harnessed to the carriage at the time of the closing of the bargain. When the bargain was on the asses the carriage not included even if the carriage was harnessed to the asses (B. B. 77).

2. A sold to B an ass and in the bargain it was not specified about the harness, the cover and the saddle, even if it was not on the ass at the time of the sale, it belongs to B, but the bag which is for the purpose of carrying merchandise, even if the same was on the ass at the time of the sale, does not belong to B, except when A says the ass and everything which is of them I sel lto you. It is an opinion if A hired a carriage he hired the asses even if they were not harnessed to the carriage (Tur; L. C. 78).

4. When A sold the yoke, the oxen are not included in the bargain. When A sold the oxen the yoke is not included in the same. When they are harnessed in the yoke either the bargain was on the yoke or on the oxen they both included in the bargain.

5. When A sold to B a well and it was not mentioned about the water, if the same is included in the bargain or not it is two opinions. When the water is sold the well is not included in the bargain (L. C. 79).

6. When A sold a nest to B and it was not mentioned about the pigeons the same is included in the bargain. If a bee-hive is sold, the bees belong to the buyer (L. C.).

7. It is an opinion that if A sold the pigeons or the bees he sold the nest or the bee-hive. This rule applies only when A specifies that he sold all fruit of the bee-hive or the nest without leaving anything for himself. If, however, he sold and did not specify the nest and the bee-hive it is not included in the bargain, and even the bees are not all sold, but the buyer may take the first three companies that are born in the beginning of the summer and afterward he can take one and leave one, the bee-hive shall not become vacant. The same rule applies to the fruit of the nest, the buyer is forbidden to take all the young pigeons which are born because the mother will fly away and destroy the nest, but he must leave some of the small pigeons in the nest so it will be occupied

and if at the time of sale there were mothers and daughters he must leave the first company to the mother and when the daughters will give birth the two first sets must be left and afterward all that are born either by the mothers or the daughters all belong to the buyer (B. B. 80).

### CHAPTER 221.

1. If A wishes to buy a bargain, the vendor asks for it 200 zus, and the buyer offers 100 zus, and each one departs to his house and after they assemble and the buyer settled the bargain with (me sicho) and was not mentioning about the price, if the vendor begin to talk about the transaction, the buyer is entitled to have it for the amount of 100 zus. If the buyer started, he must give 200 zus (Rambom).

### CHAPTER 222.

1. If two persons argue about one bargain, each one of them claims that he bought it, and the bargain is in the possession of the vendor, he is believed to decide to whom he sold the same (Kidushin 73).

2. If the article is not in the possession of the vendor he is only believed like one witness, to testify to whom the bargain is sold because he is not benefited by his witness, and the other which is contradicts must take an Torah oath (see Code 1, Chapter 75), and he may receive a half (Kidushin 73).



3. Therefore, if the vendor receives for the bargain money from the two, from one with his good will, and from the other, against his will and he not remember from whom he received with good will, and from whom against his will. Either the bargain is in his hand, either the two persons keep the bargain in their hand, in such case where it is no witness. Therefore, each one must receive a oath with holding a holy Bible in his hand and he may receive a half of the bargain and half of the money (L. C.).

4. A buys one bargain from five men, and each one claims that he is the owner of the bargain, and the money belongs to him, and he does not remember from which one he bought it, he must deposit the money by the Court, and it must remain in their possession until they admit or until Elihu will come and will declare to whom the money belongs (Yauomath 118).

5. If A claimed to B, you sold to me this article, and B answered that he did not sell. Or sold and not received the money. Or A say the transaction was made on condition and the condition was not fulfilled and B say that no condition was made. For the above claim, nine points is in favor of the possessor, and the recoverer must prove with witness and if he cannot prove, the possessor must receive an oath (Hises) or if he admitted a part of them, he must receive a Torah oath (B. K. 46).

6. It is an opinion when A say I sold my field and I do not know to whom and B claim that he bought it B is believed (Ramo; Kidushin 63).

## CHAPTER 223.

1. If A exchange a cow for B's ass and A makes a settlement for the ass with moving (*me sicho*), and the cow is in the possession of A, and she gives birth to a calf, and A claims that before B made the settlement in the ass, the cow gave birth to the calf, and therefore the calf belongs to him, and B claims that she was born after the settlement of the ass was done, even if B's claim is positive, and A's claim is a doubt, B must prove with witness or evidence when the birth was. Even if the cow is not in the possession of A, but she stands in a public highway, or in wilderness, and if he fails to prove, A must take an oath with holding a holy Bible in his hand, that the birth was before the settlement of the ass (B. M. 100).

2. When B has possession of the cow, the burden of proof belongs to A (L. C.).

3. When A and B's claim is in doubt, and no one of them possesses the cow, there are two opinions, one stated that the burden of proof belonged to B, and one holds that they must share the amount of the calf equally (Rambom).

4. If A claims positively, the birth was in my

possession, and B is silent, the calf belongs to A (L. C.).

## CHAPTER 224.

1. Every man which the doubt is born in his possession, he must prove when it was happened, *e. g.*, A exchanges a cow for B's ass, and B made a settlement (me sicho) in the cow, and before A made the settlement in the ass, the ass died and it is uncertain when the death happened. If he died after the settlement in the cow is made, the risk belongs to A and if the ass died before B made the settlement in the cow the risk belongs to him. B must prove with witness that the ass was alive at the time of the settlement of the cow. Another opinion stated that A must prove with witness or evidence that the ass was dead before B made the settlement in the cow and if he fail to prove the risk belongs to him.

2. A exchanged a horse with B for wine, and when B made a settlement in the horse, a heathen take away the horse, because he claim that A stole it from him, and account it B refused to give the wine to A. If A admitted that the horse was stolen, it is considered like a business fraud, and B not bound to give the wine. If, however, A denied and claimed that the heathen lied, B must give the wine to A (Ramo).

## CHAPTER 225.

1. Everyone which sold a field or personal property, and if afterward it is found that it was stolen or robbed, or a creditor executed for his debt, the vendor is responsible, even if it is not specified at the time of the sale, and even it is not mentioned in the deed, the Vendor is bound to pay, because it is the error of the writer (B. M. 15).

2. If the bargain was lost by accident, *e. g.*, the article taken away by robbers, the vendor is free. If, however, it was a condition made by the buyer that the vendor shall be responsible even for accident, he must pay for it (B. B. 45).

3. If it was such accident which is unexpected, *e. g.*, the river which waters the fields, stops or the river overflow the field or every such accident which is unexpected and it is impossible to recollect about it at the time when he made the conditions, the vendor is free (Gitin 73).

4. It has happened that one hires mariners to transfer for him poppies seeds, to a certain place, and a condition was made with the mariners that they shall be responsible for every accident which can happen until the poppy seeds arrive to the certain place. And the river which they must pass becomes dry. And the hirer claims the marines for the damages of the transaction, and the sages decided even if they received the responsibility of all accidents, but.



Such accidents which unexpected, they are not responsible for it. And they not bound to transfer the poppy seeds by horse, until the poppy seeds will arrive to the certain place (L. C.).

5. If the vendor stipulated that he shall not be responsibility, even if it is found that the field was robbed and the robbed or a creditor take away the condition is effective, and the vendor is free because all conditions of money transactions is valid (B. B. 44).

## CHAPTER 226.

1. A sold a field to B without receiving responsibility, and C executed the field for A's credit. If A have some pleads which he can win, that C shall not execute the field, he can start a trial with C, and the latter cannot say "what do you care, you sold the field without the receiving responsibility, because he can say I don't want that B shall have a blame of honor because he lost his money on account of me (B. K. 8).

2. A sold a field to B without receiving responsibility and afterward A bought the same field from B with receiving responsibility and one of the creditors of A executed the field for a debt of A. The latter cannot claim to B because even if B received the responsibility, if the field will executed for another's

debts, but if it is executed for his debt, B not receives responsibility.

3. If, however, A inherit a field from his father and afterward a creditor of his father executed the field from A he can collect from B (L. C., Kesuboth 97).

4. If guardian sold the estate of the orphan, afterward he may claim for his debt, and demand an execution of the same estate (Tur).

5. A sold a field to B, and after B took possession of the field, with one of the settlements, and before he used it, the field was searched and it is found that claims are made against the field, B has the right to retract and the vendor must return the money to him. If however, the claims was found after he used the field, he cannot retract, but he must make a trial with the plaintiff and if they executed the field, then he may claim the vendor (B. K. 9).

6. It is forbidden to sell real or personal property which it is of them a claim except when he notify the buyer and he is satisfied. Because no man wishes to give money and shall receive articles which it is claimed against (Schvuath 31).

רשעים בעלי אומנות לעשות תקנות בענין מלאכתם כגון לפסוק  
 ביניהם שלא יעשה אחד ביום שיעשה חבירו וכיוצא בזה וכל מי  
 שיעבור על התנאי יענישו אותו כך וכך. (ב"ב ח', ח"מ רל"א)  
 בד"א במדינה שאין בה חכם חשוב ממונה על הצבור אבל אם  
 ישנו אין התנאי שלהם או של כל בני העיר מועיל כלום ואין יכולים  
 לענוש ולהפסיד למי שלא קיים התנאי אלא אם כן עשו מדעת החכם.  
 (ח"מ רל"א).

ואם קנה הסרסור דבר בחזקת בדיל ומכרו וא"כ נודע שהיה  
 בו כסף או זהב זכה הלוקח שלא זכה בו הסרסור מעולם הואיל ולא  
 ידע בו. (ב"מ כ"ו, ח"מ רל"ב רמ"א).  
 עני המהפך בחררה ובא אחר ונטלה הימנו נקרא רשע. (קדושין  
 נ"ט, ח"מ רל"ז)

אמר רבא אמר רב נחמן שור זה נתון לך במתנה ע"מ שתחזירהו  
 לי הקדישו ותחזירו א"ר אשי חזינן אי א"ל ע"מ שתחזירהו הא  
 אהדרה אי א"ל ע"מ שתחזירהו לי מידי דחזי ליה קאמר ליה. (ב"ב  
 קל"ז, ח"מ רמ"א).

אמר רבא שלש מדות בקטן צרור וזורקו אגוז ונוטלו זוכה לעצמו  
 ואין זוכה לאחרים. (גיטין ס"ה, ח"מ רמ"ג)  
 בעי רבא זרק ארנקי בפתח זה ויצא בפתח אחר. (ב"מ נ"ב, ח"מ  
 רמ"ג).

הרי שהלך בנו למד"ה ושמע שמת בנו ועמד וכתב כל נכסיו  
 לאחר ואח"כ בא בנו ר' שמעון בן מנסיא אומר אין מתנתו מתנה  
 שאלמלא היה יודע שבנו קיים לא היה כותבן. (ב"ב קמ"ו, ח"מ רמ"ו)  
 מצוה לקיים דברי המת אפילו בריא שצוה ומת, והוא שהושלש  
 ביד השליש לשם כך. (כתובות ע', ח"מ רנ"ב)

דברי שכיב מרע ככתובים וכמסורים דמי ואין צריך קנין. (ב"ב  
 קנ"ו, ח"מ ר"נ)

אמר רבא לכל אכידת אחיך לרבות קרקע. (ב"מ ל"א, ח"מ רנ"ט)  
 זה בא בחביתו של יין וזה בא בכדו של דבש גסדקה חבית של  
 דבש ושפך זה את יינו והציל את הדבש לתוכו אין לו אלא שכרו ואם  
 אמר אציל את שלך ואתה נותן לי דמי שלי חייב ליתן לו. (ב"ק קט"ו,  
 ח"מ רס"ד)

אוהב לפרוק ושונא למעון מצוה בשונא כדי לכופ את יצרו. (ב"מ  
 ל"ב, ח"מ ער"ב)

המפקיר בפני שלשה הוי הפקר כדי שיהא אחד זוכה ושנים מעידין.  
 (נדרים מ', ח"מ רע"ג)

השוכר בהמה לרכוב עליה איש לא ירכוב עליה אשה לרכוב  
 עליה אשה ירכיב עליה איש. (ב"י ע"ט, ח"מ ש"ח)

המשכיר בית לחבירו בימות הגשמים אינו יכול להוציאו מן החג עד הפסח בימות החמה שלשים יום ובכרכים אחד ימות החמה ואחד ימות הגשמים י"ב חדש ובחנויות בכל מקום י"ב חדש. (ב"מ ק"א ח"מ שנ"ב)

המקבל שדה מחבירו מקום שנהגו לקצור יקצור לעקור יעקור הכל כמנהג המדינה. (ב"מ ק"ג, ח"מ ס' ש"כ)  
השוכר את הפועלים ואמר להם להשכים ולהעריב מקום שנהגו שלא להשכים ושלא להעריב אינו יכול לכופן. (ב"מ פ"ג, ח"מ של"א)  
אמר רבא האי מאן דאוגיר אגירי לדוולא ופסק נהרא בפלגיה דיומא אי לא עביד דפסיק פסידא דפועלים עביד דפסיק אי בני מתא פסידא דפועלים לאו בני מתא פסידא דבעה"ב. (ב"מ ע"ז, ח"מ של"ד)  
מצוה לתת שכר שכיר בזמנו ואם אחרו עובר בלאו אחד שכר אדם או שכר בחמה וכלים אבל על שכר קרקע יש מי שאומר שאינו עובר. (ב"מ קי"א, ח"מ של"ט)

ד'שומרין הן שומר חנם והשואל נושא שכר והשוכר ש"ח נשבע על הכל והשואל ישלם את הכל נושא שכר והשוכר נשבעים על השכורה ועל השכורה ועל המתה ומשלמין את האכידה ואת הגניבה. (ב"מ צ"ג, ח"מ ש"מ)

אסור לגנוב אפילו כל שהוא ד"ת ואסור לגנוב אפילו דרך שחוק ואפילו על מנת להחזיר או כדי לצערו כדי שלא ירגיל עצמו בכך. (סנהדרין נ"ו, ח"מ שמ"ח)

אסור לגזול או לעשוק אפילו כ"ש בין מישראל בין מעכו"ם ואם הוא דבר דליכא מאן דקפיד ביה שרי כגון ליטול עין מהחבילה או מהגדר לחצות בו שיניו ואף זה אוסר בירושלמי ממידת חסידות. (סנהדרין צ"ז, ח"מ שנ"ט)

אסור להזיק ממון חבירו ואם היוזקו אעפ"י שאינו נהנה חייב לשלם נזק שלם בין שהיה שוגג בין שהיה אנוס כיצד נפל מהגג ושבר את הכלי או שנתקל כשהוא מהלך ונפל על הכלי ושברו חייב נזק שלם. (ב"ק כ"ו, ח"מ שע"ח)

שנים שהיו מהלכים בר"ה זה בא בחביתו וזה בא בקורתו ופגעו זה בזה ונשברה חבית בקורה פטור שלזה רשות להלך ולזה רשות להלך. (ב"ק ל"א, ח"מ שע"ט)

ההוא גברא דבטש בכספתא דחבריה שדייה בנהרא אתא מריה ואמר הכי והכי הוה לי כגות. (ב"ק ס"ב, ח"מ שפ"ח)

כל נפש אדם חיה שהוא ברשותו של אדם שהזיקה חיובין הבעלים ושלם. (ב"ק כ"א, ח"מ שפ"ט)

הני עיזי דשוקא דמפסדי מתרינן במרייהו תרי ותלתא זימנין אי ציית ציית ואי לא אמרינן ליה תיב אמתחתא וקבל זוזך. (ב"ק כ"ג, ח"מ שצ"ז)



חשן המשפט

# Code of Jewish Jurisprudence

TALMUDICAL LAW DECISIONS

CIVIL, CRIMINAL AND SOCIAL

**By RABBI J. L. KADUSHIN**

TRANSLATOR OF THE JEWISH CODE

PARTS I, II, III, IV, V AND VI

---

אורים ותומים

SECOND EDITION

PART VI

**THE JEWISH JURISPRUDENCE CO.**

**New York**



## Introduction to Part VI

“He hat told thee, O man, what is good and what doth the Lord require of Thee, but to do justice and love kindness and to walk humbly with Thy God. Micah 6.

We are the descendants of Abraham, Isaac and Jacob, whose mission was to recognize and to spread throughout the world the unity of God and man, to teach them truth and kindness, and upon their death they left us the sacred inheritance of carrying on their noble work and following their high ideals. Therefore it is our duty to spread the light of the Torah to the people in the four corners of the world until they become so civilized that the scripture shall be fulfilled, i. e., and that the swords shall be beaten into ploughshares and nations shall not lift up swords against nation. (Isaiah II.) And we must fulfill this mission, as for example the story of Jonah, Chap. 2, where he was ordered to the city of Nineveh to teach them and lead them to the right path, and when he refused the command of the Lord and was fleeing on a ship, when the ship was in the middle of the sea began to sink and there being different nationalities on board the captain cast lots to determine whose fault it was for the floundering of the ship, the lot fell upon Jonah, and when the captain asked Jonah what sin he had committed that caused the ship to sink, Jonah replied “I am fleeing from God.” Whereupon at the advice of Jonah the captain and his crew threw Jonah into the ocean and the ship immediately righted itself, and all was calm. The whole world at present is on the verge of destruction and it can well be compared to a ship in a sinking condition, and the blame is upon those who hinder spreading the knowledge of God through the world, therefore I find my duty to translate the holy edition of the Talmudical Law decisions, Civil,

Criminal and Social, which is a continuation of the first four parts, I, II, III, IV and V, the subjects Hirer and Land Cultivator, Hirer Laborers, Borrower, Stolen and Robbed Articles, Damages, Money Damages, Wounded Neighbor, to spread the justice and the kindness to Lord children.

For example, in Code VI, Chap. 408, an ox shall even not be condemned on account of circumstantial evidence and in Code II, Paragraph 22, Page 431, it is forbidden to condemn a man for a murder on circumstantial evidence, but the proof must be furnished by regular witnesses who saw the killing. Therefore I recommend to Judges and Grand Jurors that they shall be careful of the decisions of a man's life because the blood of the man and his children depends upon them. If the proofs are not so clear, the said prisoner can be sent to prison for life because maybe the case will be discovered that he did not commit any crime.

A robber when he wishes to repent and the robbed article is no more in existence even if he wishes to repay for them it is the right of the robbed he shall release him and not receive any payment, because if he will be bound to pay for them he will refuse to repent. But now is easier for each one to repent of his sins. See Chap. 348, Code VI. Except when the robbed is in debt to some one and he is unable to pay then the debtor may collect from the robber.

When a man robbed a beam and built it in a large building and he wishes to repent he may return the money for the beam even if the plaintiff claimed for the beam itself he need not destroy the building, account should be easier to repent, and I recommend to the men of jurisprudence, judges, lawyers, etc., they shall study the sacred books and they will get the worth of the time they spend. Because they may



find every law and may decide every doubt in law that they may have and even they will not find exactly the same they may find an example.

And I hope that my sacrifice will be acceptable to you, and I pray to the Lord.

1. To guard me from mistakes and misfortunes.
2. The world shall better spend money for schools not for prisons.
3. That happiness shall be multiplied and sorrow shall flee away.
4. The world shall be filled with knowledge and evil shall flee away.
5. Men shall have clean hearts to understand what is just and unjust.
6. People shall run for education more than for money.
7. The years of the people shall be long.
8. And the Lord shall turn the heart of the fathers to the children and the heart of the children to their fathers. Malachi IV.
9. Let us learn to love each other.
10. Let the right stand in front.

### QUESTION OF LAW

Q. A leases to B a steam heated apartment for a certain length of time and A agreed to supply the steam and at the time of the lease coal was ten dollars a ton, and afterward coal increased to double the price, and A refused to supply the apartment with steam, on account of the increased price of coal.

A. When any price of coal was not mentioned in the lease A has the right to withdraw account of this unexpected increased price, but B has the right to break the lease account the lack of steam because he can say "I rented a steam heated apartment but when you refuse steam I must break the lease as I did not rent an unheated apartment. (Nachlas Zvi.)

ה' שישבו על ספסל אחד ולא שברוהו ובא אחד וישב עליו ושכרו  
האחרון חייב, ואמר רב פפא כגון פפא בר אבא (ב"ק י', ח"מ ס' שפ"א).  
אמר שמואל אין שמין לא לגנב ולא לגזול אלה לנזקין ואני אומר  
אף לשואל (ח"מ ס' שפ"ז).

איתמר אמר עולא אמר ר' אלעזר שמין לגנב ולגזול, רב פפא  
אמר אין שמין והלכתא אין שמין לא לגנב ולא לגזול (ב"ק י"א ח"מ  
ס' שנ"ד).

שומר חנם והשואל נושא שכר והשוכר שהזיקה בחמה ברשותן  
תם משלם חצי נזק ומועד נזק שלם (ב"ק י"ג ח"מ שצ"ו).

ישיב לרבות שוה כסף ואפילו סובין (ב"ק י"ד ח"מ ס' תי"ט).  
ואמר רבה זרק כלי מראש הגג והי' תחתיו כרים או כסתות, בא  
אחר וסילקן או קדם וסילקן פטור (ב"ק כ"ו ח"מ שפ"ו).

אמר רב יהודה האי מאן דבעי להוי חסידא לקיים מילי דנזיקין,  
רבא אמר מילי דאבות, ואמרי לה מילי דברכות (ב"ק ל').

שני קדרין שהי' מהלכין זה אחר זה ונתקל הראשון ונפל ונתקל  
השני בראשון, הראשון חייב בנזקי שני (ב"ק ל"א ח"מ תי"ג).

שור שוה מנה שנגח שור שוה מאתים ואין הנבלה יפה כלום,  
נוטל את השור (ב"ק ל"ג ח"מ שפ"ט).

רבנן סברי בכל ספק בממון המוציא מחבירו עליו הראיה, וסומכוס  
סבר ממון המוטל בספק חולקין (ב"ק ל"ו ח"מ ס' ת').

אמר רב יהודה אמר רב כל כסף האמור בתורה כסף צורי ושל  
דבריהם כסף מדינה (ב"ק ל"ו).

שור שהוא יוצא ליסקל והקדישו בעליו אינו מוקדש, שחטו בשרו  
אסור, ואם עד שלא נגמר דינו הקדישו בעליו, מוקדש, ואם שחטו,  
בשרו מותר (ב"ק מ"ד).

אמר רבא פרה שהזיקה גובה מולדה, מ"ט גופה היא, תרנגולת  
שהזיקה אינו גובה מביצתה, מ"ט פירשא בעלמא הוא (ב"ק מ"ז,  
ח"מ שצ"ט).

## CHAPTER 227.

הלכות אונאה ומקח טעות

## BUSINESS FRAUD.

1. It is forbidden to defraud each other either in buying or in selling and he who defrauds the other, violates a forbidden command (Leviticus 25-17).

2. The amount of the fraud which a man is liable to return is a sixth of the value, *e. g.*, if A sold an article to B which is worth six zus for five, or which is worth seven zus for six, or worth five for six or worth six for seven, the deal is valid but the defrauder must return the amount of the fraud (B. M. 49).

3. If the amount of the fraud was less than a six, *e. g.*, he sold an article which is worth 70 zus for 60 zus and one peruto, it is not necessary to return the fraud amount, and it is all considered as a release (L. C.).

4. If the amount of the fraud was more than a six, *e. g.*, A sold an article to B which it is worth 60 zus for the sum of 50 zus less one peruto, the transaction is void, and A may have the article returned. But B cannot retract if A is satisfied to give the article. It is an opinion that B may retract because the bargain is never confirmed legally. When A sold to B an article which is worth 60 zus for 51 zus because in the side of B this is less a sixth of the value of the article but in the side of A who received the

money, when you divide the money then the 9 zus is more than a sixth, the deal is valid because we must look on the value of the article, not on the side of the money (L. C.).

5. The amount of return must contain more than a peruto, if it is only one peruto it is two opinions if it must be returned or not (B. M. 55).

6. It is a doubt in the law if it is permitted to defraud each other in an amount less than a six, when the amount contains the sum of a peruto. But a coin when it becomes a little rubbed, it is permitted to pay with it like with a good one, because the receiver may pay with it again.

7. Until when it is permitted to claim for the amount overcharged, or made the transaction void, by more than a six. Until such time he may have time to appraise the article by dealers or by his relatives, to find the right value and if he lingered, he cannot claim the overcharging or retract from the bargain afterward, except when he may prove with evidence that he had an accident, and on account of it he has no time to appraise the bargain, then he may claim or retract afterward (B. M. 49).

8. If the buyer knows at the time when he bought the bargain that is overcharged, and he was silent, and after the transaction is made, he claims the overcharge before the time is over, this is effective (Ramo).



9. This rule applies only by the buyer, because the bargain is in his hands, and he is able to appraise it by the experts, but the vendor can retract forever because the bargain is not in his hands, until when he sees the same article in the market and will find the value. Therefore, if the bargain was such kind which it is all the same, *e. g.*, pepper or wheat he cannot retract after the time he was able to ask the market price and if he finds that he made an error, and was silent, or if it is found that the vendor was able to buy another article for the same amount of money it is considered as a release (L. C.).

10. This rule holds good when the price of the merchandise is not changed. If the price was changed and therefore he wishes to retract, it is ineffective (Tur).

11. The same rule applies if a merchant sells merchandise very cheap on account of his anxiety for the money, and it is recognized that he sells it account them, he cannot retract because it is considered as a release (L. C.).

12. If A sold to B an article which is worth four zus for five zus, and in such case the transaction is void, and before B has time to advise with his merchants or relatives the article increases in price, and it is worth just now seven zus, B has the right to retract, not A, because he can say if you did not defraud me, you was forbidden to retract. Just now

when you defraud me you will be permitted to retract? Shall the sinner make profit from his sin? (B. B. 84).

13. The same rule applies when A sold a bargain which is worth five zus for four and it decreases in price for three zus, A can retract, not B because he can say, therefor you defraud me, you can retract? (L. C.).

14. If A sold an article to B which is worth five zus, for six, and before B has time to examine the bargain, the same increases in price, and it is worth eight zus, A must return the one zus, because the bargain is confirmed to B, and it becomes increased in B's possession and it is his benefit (L. C.).

15. This same rule applies when A sold an article to B, which is worth six zus for five and afterward the article decreases in value, to three zus, B must return the one zus even the loss of the decreasing the bargain belongs to him (L. C.).

16. It is forbidden to defraud either an ordinary man or a merchant. This law of fraud prevails even by books, or by diamonds, or by pearls, and the buyer can have the time to consider until the time he can find an expert to appraise such an article, because these articles cannot be appraised by every one but only by an expert. Therefore if there are no experts in the country and he must transfer the article to another place for appraisal or the experts

not here but they will come afterward, even for a long time, and they will examine the bargain, the buyer has the right to retract in such time (L. C.).

17. When A sold an article to B for a bulk sum, *e. g.*, B hid money in his fist and says to A, sell to me your cow for the money without counting how much, and B was overcharged in the price, if a claim may be made for it there are two opinions. If the money was certain, but the article was bulk, *e. g.*, A says to B sell me for two zus the pile of fruit, a claim of overcharging in such case is effective (B. M. 47).

18. When A exchanges with B one vessel for another, even a needle for a gun or a ship for a horse, there is no claim for overcharging because each one is satisfied and needs the exchange, and therefore he does not care even if his article is worth more (Rambam).

19. If, however, it was exchanged fruit for another kind fruit, either it was appraised before the deal, or afterward a claim for overcharge is effective (L. C.).

20. If A says to B, the article which I sell to you for 200 zus, I know that it is not worth more than 100 zus. But on condition that you shall not claim for overcharge, or B, says to A, the article which I bought for 100 zus, I know that it is worth 200 zus, but on condition you shall not claim for fraud afterward it is effective (B. M. 51).

21. If, however, the sum of fraud was indefinite, *e. g.*, A says to B, on condition that you shall not claim for overcharge, and no amount was mentioned, a claim for fraud is ineffective. Because an indefinite sum cannot be released (L. C.).

22. If A sold an article for 100 zus, to B, and A said the article is not worth more than one zus, on condition you shall not claim for overcharge, it is not effective, because B can say when I see that it is worth more than one zus, I understood that your saying was on account of praising the bargain. Until A shall specify the amount of the fraud, much may be mistaken, then B will know how much to release it (L. C.).

23. If an owner sells his own usable articles and defraud the buyer a claim for overcharge is not effective, because by each owner his usable things are dear. If the fraud amount was more than one sixth it is two opinions if a claim for overcharge is effective or not (L. C.).

24. If A and B agreed that the bargain shall be sold for the amount appraised by C, and the latter appraised it, and afterward it is found that it was overcharged, a claim for fraud is effective. If it is impossible to return the overcharge, *e. g.*, the seller was gone abroad the sea, if C is an expert in the appraising and has not received compensation for it, he is not liable. (See Code 3, Chapter 306; Tur).



25. If an article was sold by trust profit, *e. g.*, A say to B, on my honesty, the article cost me ten zus, and I wish to profit two zus from it. A claim for overcharging is not effective (B. M. 51).

26. In the above case it is forbidden for A to charge the seconds goods for cost price, and the perfect in the value, *e. g.*, he bought ten curtains for ten dinarim in average, and among them are five which are worth half diner and five which are worth one and a half dinarim. A must give to B the perfect and the seconds for the same price, but he is permitted to add the expenses of freight and storage, not for his trouble because it is included in the amount of the profit (L. C.).

27. In a transaction of real property or notes or slaves or property which belongs to the Holy Temple, even if it was sold the value of 1000 dinarin for one diner or the value of one diner for 1000, a claim for overcharge is ineffective. It is an opinion if the fraud amount was more than a half, a claim for overcharge is effective (L. 56).

28. When the vendor appoints an agent or a guardian for the transaction and they defraud in the price if the same was in the side of the vendor, either by real or personal property, even if it is less than a sixth of the value the transaction must be void. If the fraud was in the side of the buyer it is two opinions, one holds that the transaction is void, and

one holds that the rule of fraud business applies here. When it is less than a sixth it is a release (Kidushin 42).

29. By rent real property case even if he rented a big apartment for one diner for a whole year or a small stable for one diner for every day, a claim for overcharge is not effective (B. M. 56).

30. When A hired a laborer for work either in real or personal property a claim for overcharge is not effective, because the hiring of a laborer even for one day is considered like buying. And no claim can be made in such transaction (L. C.).

31. When A hired a laborer with an ass, for a certain sum, and it is found that it is overcharged, it must be appraised how much the charge is for the ass, and for that amount a claim for overcharge is effective. But for the rest the claim for overcharge is not effective, because the rest belongs to the laborer and no claim is legal for it (Ramo).

32. A was hiring B to plant for him a field and B said that he planted the necessary seeds and a witness testified that he planted less than the necessary seeds and it is impossible to add more seeds, it is a doubt if the law if a claim is effective account of the seeds or it is ineffective on account of the field. Therefore if the compensation is not received, he cannot receive and if B received the compensation,

it cannot be recovered from him. But B must receive an oath (Hises) and he is free (L. C.).

33. If one hires a vessel or a cow for work, a claim for overcharge is effective. Because the hiring even for one day is considered like a sale. And if the amount of the fraud contained one sixth or more, either on the side of the hirer or laborer, the amount must be returned even after a long time (L. C.).

34. A job laborer, *e. g.*, A hired B to weave or sew a coat for ten zusim, a claim for overcharge is effective, and each of them either the owner or the laborer has the right to retract forever (Tur).

35. Brother or partner when they divided personal property they are considered in the law like buyers. If there is a claim for overcharge, if it is less than a sixth of the amount of the bargain, it is a release. If more than a sixth of the bargain can be void, a sixth must be returned. If they divided real property, even if they appraised the value of one diner for 100 dinerin, the division is valid. If an error was in the measure or weight, even a little bit they must return. If they appoint an agent for the distribution, and he made the error, even a small piece, the division is void (Kidushin 42).

36. If a condition was made that they shall distribute according to the appraising of the court. And the latter made an error in a sixth of the amount of the bargain, the transaction is void (L. C.).

37. A and B brothers, divide an estate, and they specify on condition that the one which will win the certain house shall have the right to open a door in an alley, and they not think, may be the leaders of the alley will forbid the opening of the door, and the house win A, and the leaders of the alley forbid the opening of the door, A can make the distribution void (Tur).

## CHAPTER 228.

1. It is forbidden to defraud each other even with words, and even it is more sinful to defraud with words than with money, because the latter can be returned, and a fraud, with words cannot be remedied and this is in money and the defraud with words is in body (B. M. 58).

2. It is forbidden to defraud a stranger, either in money, either in body (L. C.).

3. It is forbidden to defraud a wife because her tears flow easily (B. M. 58).

4. What is fraud with words? You shall not ask the price of an article when you not wish to buy it, or if A wishes to buy wheat, you shall not recommend to go to B and he will sell it to thee, when you know that B has not any wheat, or if B was repenting of his sin, it is forbidden to say to him "recollect your wrong doing before," or if he was in sickness, you shall not say that is coming to you as a punishment



for your sins, or, if it was a question of great import it is forbidden to say to ignorant person "May be you can decide this matter" (L. C.).

5. It is forbidden to call the other with a nickname, when he means to slander him, even if the latter is known by the nickname (L. C.).

6. It is forbidden to defraud in business, *e. g.*, if there is a defect in the goods, it is forbidden to sell it as perfect, unless he notifies the buyer of the defects (L. C.).

7. It is forbidden to sell meat from a dead cattle instead of a slaughtered one even to a Heathen (Chulin 94).

8. It is forbidden to invite the other for a meal when he knows that the other will not accept it, or if one meets his comrade in the middle of the way, you shall not say that you went especially to meet him (L. C.).

9. It is forbidden to sell a skin of a dead cattle instead of a slaughtered one, because the dead skin is not so strong as of a slaughtered one (L. C.).

10. It is forbidden to send a present of a pitcher of wine and cover the top with oil (Chulin 94).

11. It is forbidden to blow wind into a cattle whether to make it appear fat, or to give her special water in order to appear fatter, or to comb her hair, or blow in wind in her womb, or to soak meat in

water it shall appear white and fat, or to dye old clothing to make it look like new (L. C.).

12. It is forbidden to mix bad fruit with good fruit and sell them in bulk as perfect even new fruit in new, and new in old fruit, even old in new, although the old is dearer than the new, because the buyer may wish to keep them until they will become old (B. M. 60).

13. It is permitted to mix strong wine with mild, before the taste is set up, because the mixing made it better (L. C.).

14. It is forbidden to mix water in wine, and if it is mixed already it is forbidden to sell it unless the buyer is notified (L. C.).

15. It is forbidden to sell this mix wine to a merchant even if the latter is notified that it is mixed with water because perhaps the merchant fraud others with it (L. C.).

16. If it is a custom to taste the wine before the buying, it is permitted to mix it as he knows what he buys (L. C.).

17. It is forbidden to mix the yeast of one barrel of wine into another barrel of wine but when one buys one barrel of wine which contains a fixed number of gallons, he obliged to accept the yeast in said barrel as part of the purchase (L. C.).

18. It is permitted to separate out the spoiled barley from the good barley, it shall look clean be-

cause this is a thing which all can see, and the buyer can understand that it is worth more than it was before. But one shall not clean the top and leave the bottom untouched (L. C.).

19. A storekeeper may distribute nuts and fruit to the children gratis whose parents send them to shop and it is also permitted for a storekeeper to reduce his prices in order to sell cheap and his competitors cannot forbid him from doing so (B. M. 60).

## CHAPTER 229.

1. A sold to B six gallons of wheat in which B found the same was mixed with a quart of peas dust or straw then B cannot claim fraud therefor (B. B. 94).

2. A sold to B one hundred figs, even if there are among them ten rotten ones, A claim for fraud is ineffective (L. C.).

3. These claims must be decided according to the rule and custom of the locality, and if it is a custom that the fruit and wine shall be sold clear, and it is found that same is mixed with something else, a claim for fraud would lie. In a place which it is a rule or custom that the fruit and wine may be mixed even half and half a claim for the same is ineffective. Therefore if one separates dust or pieces of wood from wheat belonging to another he must pay to the owner of the wheat damages to the extent of the

value of an equal quantity of wheat for the reason if the wheat had not been touched, the leavings would have been included in measuring (B. B. 93).

## CHAPTER 230.

1. A said to B the cellar with wine I sell to you for a small use or he sold to him the cellar of wine without specifying and afterwards it is found that ten pitchers of wine in each hundred which is not so good, but started to exchange the taste, B cannot claim for them, if it is more than the minimum, B has the right to refuse the bargain account of it (B. B. 95).

2. If, however, A said a cellar of wine I sold to you for the use of cooking or he said a barrel of wine I sold to you, A must give all good wine that shall be possible for cooking (L. C.).

3. When A said to B the cellar of wine I sold to you A can give him such wine which it is sold in store medium, not so good, not so bad (L. C.).

4. When A said to B what is in the cellar I sold to you, even it contained all vinegar, a claim for fraud, is not effective (L. C.).

5. If A sold to B wine and B put it in his barrels and it becomes sour, B cannot claim for the wine, because A can say the sourness came through your barrels. If it is known that A's wine becomes steady



sour, and B said to him that he needs it for small cooking uses, the transaction is void (L. C.).

6. When A sold wine to B and he left it in the barrels of A for a long time, and it become sour, if B said that he needs it for small use, B has the right to retract and say to A take your wine with your barrels. If B did not say so B cannot retract because A can say why did you not drink up this wine, and not wait so long until it becomes sour (L. C. 98).

7. A sold to B a barrel with beer and the beer becomes sour, if it happens in three days of the bargain, the risk belongs to A and he must return the money to B, afterwards the risk belongs to B (B. B. 96).

8. A sold a barrel with wine to B for the purpose to sell them in retail and a half or a third of it becomes sour, the same must be returned to A and he must return the money, if B exchanges the opening of the barrel, or the market time arrived, and B did not sell it, the risk belongs to B (L. C. 98).

9. A received a barrel of wine from B in commission to transfer it in a certain place for sale and before the same arrived at this place, the wine became sour, or the price decreased the risk belongs to B, because the wine and the barrel still belongs to B (L. C. 98).

## CHAPTER 231.

1. If one measures or weighs falsely, even to a Heathen, he violates a forbidden command (Leviticus 19:35).

2. It is the duty of the Court to appoint officers and watchmen to take care that the storekeepers shall not measure or weigh falsely and the same officers are permitted to smite or punish with a tax the violator according to the decisions of the Court (B. B. 89).

3. It is forbidden to keep a false measure in a house even for the use of a night vessel, because some one may use it as a measure not knowing that it is short. If however it is a custom in the locality to stamp each measure it is permitted to use it as a night vessel because this is not stamped (B. B. 89).

4. The minimum of the dry measure is a soah, that is 3 pecks,  $\frac{1}{2}$  soah that is  $1\frac{1}{2}$  pecks,  $\frac{1}{4}$  of a soah, that is 6 quarts, one gallon 4 quarts, and  $\frac{1}{2}$  gallon 2 quarts, one quart, half a quart, a pint,  $\frac{1}{32}$  of a gallon a  $\frac{1}{4}$  of a pint or 1 gill (L. C.).

5. It is forbidden to make a measure for 1 peck because it may be exchanged for a  $\frac{1}{4}$  of a soah (L. C.).

6. The minimum of wet measure must be One Hin, 3 gallon;  $\frac{1}{2}$  hin,  $1\frac{1}{2}$  gallons;  $\frac{1}{3}$  hin, 1 gallon;  $\frac{1}{4}$  of hin, 3 quarts; one quart,  $\frac{1}{2}$  quart, and  $\frac{1}{4}$  of

a quart and  $\frac{1}{8}$  quart and  $\frac{1}{16}$  quart (Rochbam) (L. C.).

7. The leveler which is made for the purpose of smoothing the top of the wheat, etc., must be made only from wood and it is forbidden to make it one side thick and the other side thin, and it shall not be levelled slowly at two stops because it is a risk for the buyer and also not to level too quickly at one time because it is a risk for the seller, but to level it carefully at one time (L. C.).

8. When a liquid is measured it is forbidden to make the foam appear high so that it shall look as if the same is full, but it must be measured without foam (L. C.).

9. The liquid measure must be kept clean and must be often washed (L. C.).

10. Weights must be one pound, half pound, quarter of a pound.

11. It is forbidden to keep the weight in salt because it makes it light and he will sell with it an another opinion holds that the salt makes heavy and he will buy with it (B. M. 61).

12. It is the duty of the Court to set a price for the fruit and to appoint officers who shall look after the prices so that each one shall not charge according to his will and an article which belongs to a man's living, *e. g.*, bread, oil, meat, flour, etc., it is per-

missible to make one sixth clear profit besides the store expenses and trouble, but not more (L. C. 89).

13. In a place where there is no Court which takes care of these rules, it is permitted even for a God-fearing man to sell according to the price which all the other storekeepers sell because when he will complete his stock the other will charge dearer (L. C.).

14. The holder of food stuffs in cold storage to secure a high price or the great profiteer of living necessities, the Court has the right to punish them with flagellation or other punishment according to the crime (L. C.).

15. By the sale of eggs it is forbidden to make great profit, but some authorities hold that it is permitted to profit until fifty per cent., because the risk of them is large (L. C.).

16. It is permitted to the laborer when they are all assembled to pass laws and rules in the matter of their occupation that one shall rest this day and the other shall work the day and rest another day and have the right to call a strike. And if one violates the rules he shall be punished according to their regulations (B. B. 8).

17. This law applies only when no ruler is appointed in the country. If such ruler is appointed these rules of the strike must have the consent of the



ruler, then it can be valid, even it is a great risk or damage for the other (L. C.).

18. If the strike or the rules is no risk or damage for the other they need not the consent of the ruler (Ramo).

## CHAPTER 232.

1. When A sold to B a bargain by the measure or weight or count and an error is found afterward in the same even after a long time the same must be corrected and the deal is valid because the law of fraud which it is set for a time until when the defrauded has the right to demand the defrauded money. See Chapter 227 is only when the error was in the amount of the money but when it was in measure or weight or count it must be corrected forever (Kidushin 42).

2. A received money from B either for a sale transaction or a loan or as a payment for a debt and he finds it much more than is coming to him even B did not request it A is bound to return to him when the error is so much that it can be mistaken, *e. g.*, if the amount of money added counted ten, it can be that he counted each ten separately and instead he must say fifty he says forty, or, if that money counted five, perhaps he count each five separately and he made a mistake in one five and therefore it must be returned to B (B. M. 63).

3. If, however it was more one or two such amount which cannot be counted with the tens or fives, it is a release, because B give him a few more as a gift (L. C.).

4. When A sold to B real property or a servant or a cattle or personal property, and afterward it is found in them a defect, which the buyer never noticed it, before even after many years the transaction must be void. When the buyer did not use the article after he found the defects. If however the buyer uses the article after he finds the defect, he cannot claim afterward, because he released it (Rambam).

5. *E. g.* When the defect makes the article cheaper in one suz the vendor cannot say here is one suz and the transaction shall be valid because the buyer may say I wish to buy a perfect article not a damaged one. Or even the buyer wishes to keep the article with the defect and the vendor shall reduce the price for the defect, the vendor may say or return the bargain or keep it with the defect for the same price (B. M. 80).

6. A sold to B a house in another city and before B took the title, loafers damaged the doors or windows, and B wish to retract from the transaction account of it, and A says, I will reduce from the amount of the purchase price, the damages, and the bargain shall be effective, the right is with A (Tur).

7. The defect must be judged according to the

custom of the locality when they passed that it is a defect the transaction can be void, if the same is called by the locality as no defect the deal cannot be withdrawn (L. C.).

8. Every bargain which is sold without specifying, is considered that the buyer wishes to buy a perfect article. Even the vendor stipulated and said on condition you shall not claim from me any defects, the buyer can claim for it, except when the defect was specified then the transaction can be effective or when the vendee say every defect I find in this bargain which he makes it cheaper in price to a certain amount, I will release, because the releaser must know the amount much he released (L. C.).

9. A sold to B a cow and A say to B, it is in the cow such and such defects, which can be seen, and stipulated one defect which cannot be seen, *e. g.*, she bites and she is blind, or limp and she balks, and he finds in her only the defects which cannot be seen, the transaction is void because B can say I see she is no blind, I think she does not bite but what you say is only to make me satisfactory of my will (B. M. 80).

10. If, however, it is in her all the defects, or one part of them which it can be seen, then the transaction is effective because he released the seen defect the same he released the unseen (L. C.).

11. If it was in the cow the defects which can be seen and the vendor showed the same to the buyer, and say that there is in her another defect which cannot be seen, and it is found in her all the defects which is specified, the transaction is effective, because it was no fraud but specified before (L. C.).

12. A sold to B a servant and it is found in him a defect which it can be seen, and the defect is such which it does not disturb the work, B cannot retract on account of that defect, because the defect B seen and he released the same. If it is in the servant some defects which cannot be seen, and the same does not disturb the work, B can also not retract from the transaction, because he can do work. If it is found in him such defects as leprosy of his body, or epileptic or insane, B can retract on account of it because this disturbs him from the work (Kidushin 11).

13. The same rule applies if it is found that he is armed robber or he is condemned to die, B can withdraw from the transaction because his body belongs to the government and he must die. But, if he is found to be a thief or kidnapper, or drinker or glutton, B cannot withdraw, because the majority of the servants is so, except when if it was specified before (Kidushin 11).

14. It is an opinion when the servant is a kidnapper, B can withdraw of the transaction (Tur).



15. A sold a cattle to B for the purpose of slaughter and B slaughtered it, and it is found that it was a hole in her womb and the leprosy is swollen, and this is evidence that it happened three days before. If B bought the same within the three days B can withdraw of the transaction and the money must be returned to B. If B bought the same after the three days or he bought it in the three days and the leprosy was not swollen, then there is a doubt when it is happened. Either in the possession of the buyer or in the possession of the vendor. The buyer must prove that it happened in the three days of the bargain and he is free; if he fails to prove he must pay for the cattle if it is not paid before, or if it is paid, he cannot claim for the same (Chulin 50).

16. If it is a custom in a locality that such defect cannot be claimed, the same must be obeyed (P. tsuvo).

17. A sold to B an article which contained a defect therein, and B made another defect before he found the first defect. If B done such defect which it is accustomed to be done, he is free; if, however, he makes such defect which it is no accustomed to do so, he must return the article to the vendor and he must pay for the defect which he done (Rambam).

18. A bought a bed spread from B and A cut it to make a shirt and afterward it is found that there

is a defect in the bed spread which it was before the cutting, B can return the cut pieces to A; if, however, B sewed the shirt and afterward he found the defect, and it is a benefit there from the sewing, the benefit belongs to B and A must pay for the benefit to B (L. C.).

19. A sold to B a real property and B eat the fruit of the real property, and afterward he find a defect therein, if B wishes he may return the real property and pay for the all the fruit which he eat. If it was a yard and he was living therein, he must pay rent for the same (B. M. 66).

20. A sold to B cheese and after three days he opened same and he found it much rotten to a great extent, it must be asked by the cheese maker if in much time is possible to became so rotten. If they declare that the spoiling happened in the possession of the vendor, the transaction is void. If it is a doubt when it is happened, then possession is nine points in the favor of the possessor. If the money was paid already B cannot get same returned, and if it is not paid, he need not to pay for the same (Tur).

21. A sold to B a closed pitcher with oil and B did not open it but he depended on A and A said is good, and afterward when B opened the pitcher he found that the oil was unclear A must take an oath, that he gave good oil as he promised and he is free.

If A refuses to take the oath then B must take an oath, that A promised to give him good oil and this is the oil which he gave him and he can return the oil and A must return to B the money, or the oil must be appraised, as to how much it is cheaper than the good oil, and B can receive it for a reduced price (L. C.).

22. A sold to B an ox and it was therein a defect which cannot be seen and the ox died on account of that defect, A must return the money to B. *E. g.* A sold to B an ox which he had no teeth, and B put it in the same stable with all the other cattle, and put food for all, and they all eat the said food, and B not knowing that the ox does not eat until he died from hunger, B must return the dead ox to A and A must return to B the money.

23. If A was a commission merchant or broker who buys from every one, and it is impossible for him to know about such defects, then the broker must take an oath (Hises) that he did not know of that defect and he is free, because it is the duty of B to examine the ox separately and to return to him before he died, and the broker shall return the same to the original vendor, if he does not do so, it is his loss (B. M. 42).

24. It is an opinion that even if B was a broker he must pay to A the money, because even if he was defrauded he is forbidden to defraud others (Ramo).

25. If A sold a ring to B, and stated that is gold and afterward B finds that is metal, then the broker must return B's money, even though the broker received the same as gold, if A does not believe that it is metal and B cannot prove the same, then A may take an oath that he did not know that the ring was metal and he is free. If A bought a ring as metal and sold it to B for metal, and afterward it is found that the ring is silver or gold, the gain belongs to B because A did not know of the chance (B. M. 26).

26. A sold to B eggs and it is found that the chicken has already started to hatch the same, and it is impossible to use the same for eating purposes, the transaction is void and the money must be returned. If it is a rule in the locality to decide about such cases, it must be obeyed (Tur).

27. If A sold seeds to B which can be used for eating purposes, *e. g.*, wheat or barley, and B planted the seeds and they did not grow, A is not responsible, because A can say that he sold to him the same for the purpose of eating and not for planting. If B notified A that he bought the seeds for the purposes of planting, A is responsible for the damages (B. B. 94).

28. A sold to B an article and he notified him that he must transfer it to a certain place for sale, and after he transferred it a defect was found therein A cannot say that B should return to him his bar-



gain to his place, but he must give B the money in the certain place, and the expenses of the return of the article belongs to A, or he must sell the article there. Even if the article was lost or stolen after B notified him, it is A's risk and if A knew of the defects he is bound to pay the expenses which B incurred in transferring the article to the certain place. If A did not know of the defect he is free from the expenses incurred in the transfer of the article to the certain place. But he is responsible only for the expense incurred in transferring the article from the certain place. If B did not notify A that he must transfer it to a certain place, and he transferred it, and he found a defect in the article it is in the possession of the buyer until he returns the article with defect to A (Tur).

29. A sold an ox to B and he found that he is a gorer and he is impossible to use for work, but he is fit only for slaughter, and the buyer is one who buys for both purposes, even though the majority of people buy oxen for plowing, the transaction is effective because A can say that he sold the ox for the purpose of slaughter. If however the money for the transaction is unpaid and even though half people buy oxen for plowing and other buy them for slaughter, possession is nine point in favor of the possessor and B need not to pay (B. B. 92).

30. If B buys only for plowing and A knows this,

the transaction is void, because he knew that B bought for plowing, and the ox is unfit for that purpose. If A buys only for slaughter the transaction is valid.

31. If B buys for two purposes, that is, for slaughtering and for plowing, the question can be proved by the price, because oxen for plowing are more expensive than oxen for slaughter. If he gives the money for plowing the transaction is void, and if for slaughtering it is effective.

### CHAPTER 233.

1. A sold to B one kind of fruit and he give to him another kind fruit the transaction is void and they both have the right to withdraw, *e. g.*, A sold white wheat and it is found that is read one or vice versa, or wine and it is find that is vinegar, this transaction must be void because it is another kind fruit. If however, A sold to B good wheat and he give him bad one, B can retract even he not defraud in the price, A may retract but not B (L. C.).

2. If A sold to B bad wheat and it is find that is good one even it is no defraud in the amount of the price, even the price of wheat is decreased afterward (L. C.).

3. If however it was sold good wheat and it is good, even it can be better one for it or he sold bad one and it is bad even they so bad which cannot be

bad like them the deal is valid and the amount of the fraud must be returned (B. B. 83).

4. If A sold to B meat of mensheep and stated that the power of reproduction is taken and it find that is not taken the same the deal is valid, but A must return the difference of the value when B is known for a particular man which does not eat meat only from such mensheep which the reproduction is taken, the deal is invalid (Ramo).

5. If A sold clear silver to B and it is find that is mixed with metal the deal is valid but A must return the difference of the value (L. C.).

## CHAPTER 234.

1. A schladhor a cow and sold the meat to costumer and received pay for it afterward it is find that the meat is forbidden to eat account the Torah Law. The customer may return the remainder meat and A must pay the whole amount which was received for the meat without deduction for which they used it, because the customer has not a good taste in them meat because they violate a forbidden command of the Torah.

2. If however the buyer uses the meat for dogs or for Heathen A may deduct of the money for much B uses it and A must return the balance (Bcheres 37).

3. If however the meat was forbidden to eat account the Rabbinical enactment, if the meat is in exist-

ence the same can be return and A must return to the buyer the money if it was eaten all or a part of them A must return the money for the return meat not more (L. C.).

4. If A sold to B an article which is forbidden to have a benefit from it either by the Law of the Torah either by enactment of the Rabbinical the money must be returned and the transaction is no effective (Tur).

## CHAPTER 235.

1. A minor under six years old if he confirm an article to another it is invalid and from six years until he becomes of age if he is clever in business the transaction in personal property either buying or selling or gift either in a smaller or a bigger amount it is valid because it is a enactment of the Rabbinical he shall be able to make a living. But by a transaction of real property either the same was inherit from his father or he received a gift or the guardian bought for him he cannot confirm to other until he becomes 13 years by a case of male and 12 years by case of female and shall have hair under the arms. And even he give it as a gift at the time he was of died bed such field which was given to him as a gift and he is clever in business the transaction is invalid (Gitin 59).

2. When the minor inherit a note from his father



the Rule of Real Property prevail and he is permitted to sell or to give it to another (Tur).

3. This law applies only when the minor has no appointed guardian if however he has a guardian his transaction even by personal property is invalid without the consent of the guardian, if the guardian consented the transaction either to sell or to gift by personal property is valid.

4. If a minor which has no guardian and he is clever in business and made a transaction in personal property and fraud or defraud the same rule of a full age applies, less than a six of the amount is a release a six must be returned more than a six the deal must be void (Gitin 59).

5. The settlement of a minor by personal property must be made with moving if however with the giving of money cannot be legal by a transaction when the minor is the buyer even to be bound to receive the coursing of the promises and no fulfill. But if others give money for a bargain belongs to a minor and they retract they must receive the coursing (L. C.).

6. The same rule applies if a form of agreement is made from the minor or he hires, the place which the personal property lies and the minor withdraws of the sale the bargain does not belong to the buyer because no trial can be made for a minor and no form of agreement can be valid because the same must be

written in a note form and sign by witness and the latter is forbidden to sign only when it is made by full age man (Rambam).

7. The same rule applies if a minor bought personal property and made a settlement with a form of agreement and hire the place which the personal property lies in, the settlement is invalid until he must remove the same bargain because the settlement of hiring the place is under the law of agency and a minor cannot appoint a agent but a minor female which the law of her yard is consider as her hand she can confirm the personal property from others, with the settlement of hiring the place or form of agreement (B. M. 10).

8. If a minor bought real property and pay for it and take possession in the same altho the minor presence is considered as absence, this is effective because a chance can be won to each one even in his absence (B. B. 137).

9. When a minor becomes of age 13 years and a female after 12 years and they have hair under the arms even they not so smart in business the transaction in personal property is valid but by real property it is unvalid until he must be smart in business after he becomes his age but the court has the right to sell the real property to pay the debts of the father (B. B. 160; Ramo).

10. This rule applies only in the real property

which belongs to him as he bought himself or it was given to him as a gift but by the real property which he inherited from his father or from other relations or it was given to him from a person which lies of dead bed. He is sale cannot be valid until he reached the age of 20 years and becomes hair under the arms not before because perhaps he will sell it for a cheap price for his loving money (L. C.).

11. The gift of a persons which is over 13 and less than 20 either gift of the dead bed, or healthy condition is valid because when he not received no benefit from the receiver of the gift he will not give. Therefore the Rabbinical enactment that his presents be valid because his words shall be heard (Rambam).

12. A person which is 20 years old and have no hair under the arms and no showing signs of importancy he is considered in law like a minor and his transaction is invalid until he reaches the age of a majority of a man's life, 36 years (B. B. 155).

13. If one sold real property before it is proved that he is 20 years old and have signs under the arms and no showing signs of importancy and afterward the hair under the arms grow to him, which that is evidence that he becomes from now the full age, the transaction which is made until now is invalid (Tur).

14. If however it is showing in him the signs of importancy, he is considered as a full age from the

time of 13 years and the all transaction which is settled till now is valid (L. C.).

15. If one sold real property either his, either his fathers and he died and the relatives claim that he was at the time of the sale a minor and therefore his transaction is invalid and they wishes to examine the dead body to find if he have signs under the arms or not this is not effective because it is positive that the witness will not sign the deed only when the vendor is a full age. And the signs can be exchanged after death and, it is forbidden to slander a dead person (B. B. 154).

16. When a man before 20 years sold a real property which he inherit from his father he have the right to recover the real and the fruit from the buyer either before he reaches the age or when he reaches the age and if the buyer spent expenses of planting it must be appraised and deducted from the fruit and the balance must be returned to the vendor. If however when he becomes of age he was silent and no claim for it he cannot claim afterward because it is considered like a release (L. C.).

17. If a minor borrowed money from others it is two opinions if he is bound to pay when he becomes of age or not, and a third opinion stated if the loan was for the expenses of support he must pay, if it was for another purpose he is no bound to pay (Tur).

18. If a minor was surety and the borrower fail



to pay the debt, the minor's surety is free even after he becomes of age (L. C.).

19. A deaf man which he not hears and not talk or talk and not hear he may buy or sell personal property with his mark but not real property and even by personal property he must be examined by expert if he is sensible or not (Gitin 59).

20. A dumb man which he hears and no talk from the birth time or he becomes dumb afterwards his buying or selling or gift either by real or personal property is valid. But he must be examined or he must write with his hand.

21. One which hears by hollering to him he is considered a healthy person and his transaction is valid (Tur).

22. A fool, his buying or selling or his gifts is invalid either by personal or real property. And it is the duty of the court to appoint a guardian which will take care of his interests, like they must appoint for a minor.

23. A man which is some times foolish and some times sensible, *e. g.*, an epileptic, at the time when he is sensible all his transactions are valid, and at the time when he is foolish every transaction is void. Therefore the witness must examine the epileptic because may be the transaction was either at the end or the beginning of his foolish time (Erwin 65).

24. When two sets of witnesses contradict each

other one set says at the time when he was sensible he sold the bargain and the other stated when he was epileptic he sold. By a case of real property it must be decided in the favor of the vendor and the sale is void and by a transaction of personal property must be decided in the favor of the possessor (Ramo).

25. A drunkard his buying and selling is valid but when he is over drunk as lot which he not know he does, his transactions are void (Eirvin 65).

26. If A sold real or personal property to B without his consent B has the over hand, if he wish to consent afterward to buy the article, A cannot retract. If B refuses, the bargain must be returned to A (Rambam).

27. A one close a deal on Saturday or on atonement day even he violates a forbidden Rabbinical command and he must be punished with flagellation for it, the transaction is valid, and the deed must be written from the date of tomorrow (Tur).

## CHAPTER 236.

1. A Heathen threatens a man with killing until he redeem himself with giving to him his field or his house and the Heathen sold the same field or the house to A, if it is in the means of the owner to buy the same field A must return to him, if it is not in the means of the owner to buy it, or when the field is in possession of the Heathen twelve months, every one

which buys the same from the Heathen, belongs to him, but the buyer must give to the first owner the amount of the value of one-quarter in the real property or a third from the price in cash which is received by the Heathen, because the latter sold the field cheaper because it cost him no money and the reduced amount belongs to the first owner, therefore if he buys from the Heathen for thirty zus he must give to the owner 10 zus or one-quarter in the real and afterward when the owner will be able he will buy the rest, and if the buyer refuses to give the amount it is considered by him like it is robbed (Gitin 59).

3. This rule applies only in a place where it is no court and officers, if however in a place where it is protection for the citizen and when the robbed has the right to recover his field by the law and he fail to do this, it is an evidence that the owner renounced his right of ownership and the same belongs to the buyer and he need not to give anything (L. C.).

4. It is an opinion that this rule applies only when the owner gives the house or the field of himself he shall not become killed if however the Heathen takes the field by force the same must be returned to the first owner and they must return the money to the buyer (L. C.).

5. When a government or a ruler becomes angry at his servant and take away his house or his field and sold it to another the buyer need not to give any-

thing to the first owner because the law of government is considered like the law of the Torah (B. K. 117).

6. When an Israelite pawned his field by a Heathen and a time was set if he will not redeem it at the certain time shall the Heathen have the right to sell it and the same was sold if it is sold at its right value it is effective, if it is sold less the value even a small amount the sale is void (Ramo).

## CHAPTER 237.

1. A was trying to buy or hire an article, either real or personal property and another come prior and bought or hired it, the buyer is called a wicked man (Kidushin 59).

2. This same rule applies if one tries for a possession by an employer and the other takes away his chance from him (L. C.).

3. If the article is such kind which is abandoned (Hefcer) or when one tries to secure a gift and another takes the previous it is two opinions if he is called a wicked man or not (L. C.).

4. It is forbidden to a teacher to hire himself to an owner when there is another teacher, except when the owner says that he does not want the first teacher, but when one owner hires a teacher it is permitted to the other owner to hire the same teacher to teach his



children because the latter may say I believe that the teacher will teach my son good (L. C.).

## CHAPTER 238.

1. It is permitted to write a deed for the vendor that he sold his field to B even B is absent but the vendor must make at the same time a form of agreement that he confirm the field to B and the witness shall know the name of the vendor, shall not be possible to make some forgery, but it is forbidden to write a deed to a buyer without the consent of the vendor. It is an opinion when the vendee is absent that it is only legal when the vendor writes in the deed that he admitted that the money for the bargain was received from the buyer. If however this is not written so when afterward the vendor will claim for it he must produce witness that the sale was consented by the buyer (Tur).

2. It is an opinion even the vendor made a form of agreement that he confirm the field to the buyer the deed cannot be written in the absence of the vendor (B. B. 167).

3. The expenses of the writing of the deed belongs to the buyer to pay (L. C.).

4. A says to witness the house which I have in the other city I presented it to R even the witness not know if he have a house there or not they have the right to write a deed, because they only testified for

the gift and if he have no house there, the gift is void anyway.

5. If in a deed is not mentioned the amount of the bargain but only the contents of the deal it is valid (Ramo).

### CHAPTER 239.

1. If A claims that he lost his deed for the field which he bought from B the court has the right to write another deed, it is an opinion that the other deed must bear the date of the first deed (B. B. 168).

2. At the time of the sale it is permitted to the buyer to demand a duplicate of the deed (Ramo).

3. A deed which is written bearing a later date than the sale is made is void except when it is mentioned in the same that it is dated later (B. B. 171).

### CHAPTER 240.

1. A writes to B two deeds of one field and each is different date if one stated that he gave the field as a gift and the other stated as a bargain the last one not destroy the first one because we can say therefore A do so to receive the responsibility. If some debtor will execute the field for his debt he must stand good for it and even if the obligation is not written in the deed it is the mistake of the scribe—if the first one stated that he sold it and the second that it is a gift to B it is valid because he write the other

shall not be claim by the border neighbor. (See Chap. 175, Kesuboth 44.)

2. If the two deeds were stated in the form of sale or a form of gift if he added in the second deed which it was not contained in the first one the first is valid because he writes the second for the purpose of the addition, if it is no addition the other deed destroys the first one, therefore the fruit which the buyer has eaten from the first date to the second date the same must be returned if it was a tax to pay for each year to the government the first owner must pay the tax until the date of the second deed (L. C.).

3. If one gives two deeds in the same date to two different parties either in form of sale or gift and it is not a custom to write in the deed the hour, the decision is left to the court to whom they consider it can be decided in his favor (Kesuboth 94).

4. If it was a form of agreement it can be proven by the witness who first received the form of agreement or who received first the deed (L. C.).

## CHAPTER 241.

### הלכות מתנה

### LAW OF GIFT.

1. When A gives a gift to B either real or personal property, B must make a settlement (Kinion) as it is necessary to make the same in a bargain transaction. (See Chap. 190, Rambam.)

2. When B makes the settlement even if it was not made in the presence of a witness, but when they both admit that the settlement was made it is valid. If a settlement is not made, but only a promise to give the gift, the same is not confirmed to B and each one may withdraw. If however A was promised a small amount to B, when A withdraws the same he can be blamed for not fulfilling his promises (B. M. 49, Kidushin 65).

3. A releases to B the debt which he owes him or if some article was entrusted to B and he says I release the article to you, this transaction can be valid, even without settlement (Kinion) only with the same promises (Kidushin 16).

4. It is an opinion even A has a note or a pledge from B, he must return it on account of the release (Ramo).

5. A has a claim against B in a civil action, and the court decided that B is bound to receive an oath, and B requested A that he should release him from the oath, and A says it should be as you say, it is considered like a release and he is free from the oath (L. C.).

6. If A says to B how much you will take from my fortune from the personal property, I will release you, A has the right to withdraw before B takes, but after he takes, it belongs to B. But in such a case of real property, even B takes possession or put his



premises in the real property, A has the right to withdraw, and B must pay for the use of real because the real is in the possession of the first owner and a doubt either in law either in the confirmation must decide in his favor (Rasbo).

7. It is the opinion that every gift must be marked with the border, which one real is given as the gift, *e. g.*, if A says to B one field of my real I will give to you, or he says I will give all my real, except one part, because it is not marked which one is given therefor, nothing belongs to B, and B cannot claim even the smaller part of the fortune, until A shall mark the place which he gives as gift, if however A says a part of this field I will give to you, even it is not marked which part, but it is marked the field, the smaller part belongs to B. Another opinion states that a man can confirm a article which is certain even the measure or the weight is uncertain. (See Chap. 209, Rambam.)

8. It is an opinion that a gift must be given with the privilege that the receiver shall have the right to do with it according to his will. If it is understood that it is given only for a certain purpose the gift is ineffective. If however it was stipulated on condition he shall not give this to a certain man or he shall be forbidden to sell it, the consideration is valid, and the receiver must fulfill the condition (B. B. 134).

9. If A gives to B a gift on condition that he shall return the same to him on a certain time, or of all the life of A or for all the life of B, the consideration of the gift is valid for the certain time, either in real or in personal property, and the receiver of the gift can use the gift until the certain time but when the time arrives it must return, if it is not returned the transaction of the gift is void (B. B. 137).

10. If A says to B I will give you my field as a gift, on condition that you give me 200 zus, and B dies, his heirs have the right to give the 200 zus, and receive the field as a gift (Ramo).

11. If A promises to give B a certain article, A has the right to give cash the value of the article to B (Ramo).

12. If A gives to B, an ox on condition that he shall return to him in thirty days, and the ox dies in the mean time, B is not liable for it (Raschbam, B. B. 137).

13. When a gift is given on condition, either the same was stipulated by the giver or the receiver, and was made legal accordingly the law standing in Code 4, Chap. 38, then if the condition is fulfilled, it is effective, if it is violated the gift is no effect (Rambam).

14. If A says to B I will give you a certain amount on condition that you do a certain work, B must prove that he did the same, and he is then en-

titled to the sum, if A says to B, on condition that you do not do so, I will give you a certain amount, A must prove that B failed the condition and then he is free from giving the sum (Gitin 74).

15. A has two sons, one an older and the other a minor, and he give his whole fortune to the two sons, one he gave more, and to the other less, and puts a condition in the will, that the older one is forbidden to sell anything of the fortune, until the minor will become of age, and the oldest violates the condition, and sold it before, and the father dies afterward. The part which was given to the older is ineffective from the time of the violation of the condition, and the same belongs to the father, and after his death, it must be divided among the older and minor brother, and the part which was given to the minor, belongs to the minor alone (Tur).

## CHAPTER 242.

1. A was forced by duress to give a gift a field even it is written in the deed that he received, the obligation for responsibility if a debtor will execute, the field on account of his debt, and even he did not write a notification of the transaction. (See Code 5, Chap. 205.) If the force is known the transaction of the gift is void (B. B. 40).

2. Therefore the notification may be written even if the force is not known, because even the notifica-

tion is false, if it is proven that he was forced, the gift is void (L. C.).

3. When the force of the gift is known and A delivered the notification, and afterward destroy the notification the same is void and the notification is in existence; if however, A deliver the notification and the force is not known and afterward A destroy the notification the gift is effective (Tur).

4. Every gift either from a sick person or healthy, must be openly announced of the gift. If however A says to the witness, hide yourself and write a gift deed in secret, or even if A says to the witness, write a deed gift it is invalid, but A must say that you shall write the deed in a public place and sign it, in open, and it must be mentioned in the gift deed, that it was written in a public place if the same is not mentioned, the gift is invalid.

5. A man is on his dying bed, command that the gift shall not be announced until he will die, it is valid, because at the time of the confirms the gift he permitted to announced (Rambam).

6. If one writes two gift deeds of one field, the first was made in secret and the other was written in public, the second is effective.

7. If it is evidence, that the giving the gift was against his consent, even it was written the gift deed in a public place, when it is found that he made a secret gift deed before to another, the two gifts are



void. The second one because is evidence that is against his will because the secret was given before (B. B. 40).

8. It happens A decides to marry a certain woman, and the latter says she will not marry him unless he writes his whole fortune on her name, and the older son hears of this conversation, and made a protests, because he left nothing fortune to him. A commands to the witness, that they should hide themselves, and write the whole fortune to the son, and afterward he writes his whole fortune to the woman and he marries her, and the case was decided by the sages, that the son's gift is ineffective, because it was in secret, and the woman's gift is also ineffective, because the first secret gift is declared as a notification to the woman's gift (B. B. 40).

## CHAPTER 243.

1. If A confirms to B personal or real property, as a gift through C, when C made a settlement in the articles it belongs to B, and A cannot retract or withdraw, and B has the right to refuse or receive the gift (Gitin 14, B. B. 138).

2. This law applies only when A stated to C he should confirm the articles for B, if however he stated, that C should care for the articles to B, A has the right to withdraw from his promises, before the gift arrives to B. If the receiver of the gift is a

poor man, he cannot withdraw even before it arrives (B. M. 49).

3. If A says to two witnesses, you win the field for B, and write the deed, and they take possession of it, A can withdraw from the writing the deed until the deed gift arrives to B, even he cannot retract from the gift (B. B. 77).

4. If A stated to the two witnesses win the field for B on condition you shall write the deed for him, or on condition you shall give him 200 zus, even they take possession of the field, A may withdraw and shall not write the deed, or shall not be given the 200 zus, and when the condition is not fulfilled the gift is also destroyed (L. C.).

5. The winner for gift must be of full age and with the full consent, either a man or woman, even a married woman is entitled to be the winner of the gift, but a married woman when the gift giver is her husband, she cannot act as agent to win for another, except when she has a part in the same gift (Eruvin 79).

6. A Heathen cannot act as agent for a Israelite and an Israelite cannot act as agent to win the gift for the Heathen (B. M. 72).

7. A minor which so clever and understands that when a piece of wood given to him, he throws it away, and when a nut is given to him, he receives it, he may win a gift for himself, but he cannot act as

agent to be the winner for another. If he is not so clever, he cannot act as agent not for himself not for others (Gitin 65, L. C.).

8. A fool cannot act as agent for himself or for others, but a full consent person may win a gift for him (Yavomath 113).

9. A dumb man when others win for him the gift it is effective, but he cannot act as agent to win for others (B. M. 8).

10. It is permitted to win an article for a minor, even he is one day old, or to win for a full aged person either in his absent or present (B. B. 156).

11. It is an opinion if one obligates to give same thing to a minor either in a note form or with a form of agreement because the article is not given just now to the minor, the settlement of the transaction must be made through a person of full age (L. C.).

12. The court yard of a man may act as agent to win a gift for him, even he does not stand thereby at the time the gift arrives in the court yard (B. M. 11).

13. This law applies only when a yard is fenced and guarded, if however such yard which is unguarded, *e. g.*, a field or a shanty the same cannot win the gift for him only when the owner stands thereby at the time the gift arrives and says me field shall confirm to me, then it is effective (L. C.).

14. Every man in his four yards which he stand

in a alley, or on the side of a public street, if a gift was thrown there, it belongs to him and the giver cannot withdraw because it is considered in the law like, it is in his possession.

15. In a public highway or in the other's field, the law of the four yards cannot win the gift until it will receive it into his hand.

16. The yard of a female minor, or her four yards, can act as agent to win for her the gift, but not the yard of a male minor (B. M. 10).

17. A wish to give B a gift a pocket with money and confirm to him with the settlement in his yard, but he threw it in the door of B and the pocket passes to the other door to the street and afterward A withdraws from the gift, but at the time when it was in the air of B's house A not withdraws. This is a Dauth in the law, if the air is considered as yard settlement or not, therefore, the pocket must remain in the possession of the first owner (B. M. 12).

18. If however, in such case when A abandoned the same, and a third party catches the pocket it must recover from him and give to B. When A threw the pocket from the roof to the yard, and before it reaches to the ground A retracts, it belongs to B, because it is considered as like it laid in the yard (Gitin 79, B. K. 70).



## CHAPTER 244.

1. A says to three persons you say to two witnesses, you write and sign a deed gift, and give it to B. This is ineffective, and when they say to the two witnesses, and the deed gift is delivered to the receiver, the gift does not belong to him (Gitin 29).

2. This same rule applies, when one says to two witnesses, that they shall write and sign a gift deed, and give to B they are forbidden to say to a writer, he shall write a deed and give it to B, but they must write themselves (L. C.).

3. It is an opinion that it is permitted, when he stated to two witnesses, that they shall say to two other witnesses, that they shall write a deed gift to B and give it to him as a gift (L. C.).

## CHAPTER 245.

1. When A writes in a note form, I will give the field to B or that the field is given to him, or the field shall be his, when the note is delivered to B, the field belongs to him. If however he writes this field I will give to B, even witnesses, testified the same the field not belong to B, because it is considered as a promise, and A has the right to withdraw of it (Gitin 40).

2. It is an opinion if a form of agreement was made at the time of the kind promises, it is effective (B. Y.).

3. It is an opinion if A says to B this field I will give to you from now, either the transaction was with a note or with a form of agreement, it belongs to B from now (Tur).

4. If A says I give this field to B, and B say that is not give to him A is believed, because perhaps he confirmed the field to him through an agent and a debtor of A cannot collect his debt from the field as long as it is sufficient fund from which to collect from itself, if however it is insufficient fund from which to collect, A's debtor can collect from the field. Because A is not believed with his admission to prevent the collection (Gitin).

5. If A stated I write and give the field to B and B states you not give it to me, if B himself admitted so, he is believed, because the admission of the defendant is believed like 100 witnesses, and the fruit from the field A may use. If however, the son of B says you not give the field to my father, and A says I give it to your father, the fruit must be deposited by a third party, until it will be proven, if he gives the field or not (Gitin 40).

5-a. It is an opinion that this rule applies only when the son stated I was in the same conversation and I know that you not give it to the father, if however he was not in the same conversation, the same

rule if A says that he give the field to B, and B denies prevail (Tur).

5-b. When a debtor from B, wish to collect from this field, B stated that he did not receive it as a gift, but he is only appointed as guard of the field, and the debtor claims positive that you received it as a gift, and it is no other fund from which to collect B must take an oath (Hises) and the field must be returned to A the first owner (Rambam).

6. When A claims that he did not give the field to B, only he is appointed as guard, or the gift was given, against his will, or B robbed the field from him, and B claims that he received it legally as a gift. If B has possession in the same a time of three years, B must receive an oath (Hises) and he is free

7. When A gives a field as a gift to B and afterward B return the deed and release A of the transaction, the field cannot be return with such effect until A must make a settlement (Kinion) and B must write a deed in the name of A.

8. When B received a field as a gift, and made a settlement (Kinion), and at the same time B was silent, and afterwards B retracts and refuses to receive the same on account a defect, his statement cannot be effective that the field shall be returned to the first owner, but it is considered like an abandoned article, which every one could take title over it, and the first one who takes possession may win title of

the field. If B was against the bargain at the beginning the field does not belong to B, but must be returned to A (B. B. 137).

9. If the same gift was confirmed through a agent, and B hears it at the same time, and was silent, and afterward B refuses to receive the gift, it is a doubt if he was silent, because he was satisfied, and when he refuses afterwards because he retracts, and the field becomes the law of abandonment (Hefker) and each one is entitled to obtain possession, of it, or he is silence, because it did not come yet to his hands, and he refuses statement afterward, it is evident of the beginning that he was not satisfied, and the same must be returned to the first owner, therefore, if another obtained possession of the field, it cannot be recovered from him, because perhaps it belongs to B, and when he refused the field it is considered abandonment, and if the first owner seized the same field from the first winner, it cannot be taken away from him, because maybe it does not belong to B, because the last statement proves that the gift is against his will, and the field is in the possession of the first owner (B. B. 137).

## CHAPTER 246.

1. Every gift must be managed according to the idea of the giver, even he did not stipulate it so, *e. g.* A has only one son, and he went abroad the



sea, and A hears that he died, and A writes all his fortune, legally, to B, and afterward his son return, the transaction of the gift is void, because it is known that if he would know that his son lived, he would not give all his entire fortune to B (B. B. 146).

2. If however, he left a part of his fortune either real or personal property, the gift is effective (L. C.).

3. If the same rule applies when the gift is given by a healthy person or not, it is two opinions( Tur).

4. It is an opinion, even a healthy person wrote all his fortune to another, because he must escape from his place on account of his debtors, or on account of his enemies, and afterward he makes a settlement with his debtors and the enemies dies, if it is proved that he wrote the gift only on account of that reason, and when this is over, and he needs his fortune, the transaction of the gift is void (Tur).

5. A writes his whole fortune to one of his sons as a gift, either A was healthy, sound or was in a sick condition, even the son is only a baby which lies in a carriage, it is considered in the law, only as an appointment of guardian, and he must share the whole fortune with all the brothers. Because we mention his idea, that he do so only shall the rest of the brothers, give him respect and his words shall be heard (B. B. 131).

6. If however the father leaves a part of the fortune for himself, either real or personal property,

or it is stipulated in the deed, that he confirms to him legally, not for appointment, or he stipulated that he is permitted to sell or give it to others, or he made a form of agreement, or any kind which it could be evidence that he means it as a real gift it is effective (L. C.).

7. If it is a doubt in the language of giving the gift, if the giver's ideas is for a real gift, or as an appointment of guardian, the burden of proof lies upon the receiver (Rasbo).

8. This law only applies when A writes to one son, when there are more sons, if however A wrote the entire fortune to one son, when the rest are daughters, or he wrote it to a daughter, when the rest are daughters or sons, or to one of the heirs, when the rest are other heirs, even he did not leave nothing for himself, the gift is effective (B. B. 144).

9. It is an opinion when A writes it to a daughter, and the rest are daughters or sons, she is only appointed as guardian (Ramo).

10. If A writes all his fortune to one of his sons, and to a stranger, it belongs to the other half as a gift, and of the rest, the son is appointed as guardian for the other brothers (B. B. 131).

11. It is an opinion when A writes half of his fortune to his son and half to B, half belongs to the son and the rest to the other, if he writes two-thirds

to the son and one-third to the other, the son is considered as guardian (L. C.).

12. When A writes all his fortune to two sons, they both are considered in law appointed as guardian, if however he writes one-half to one son, and one-half to the other son, to the first, the half belongs to him, because at the time when it is written to him, it was only a part of the fortune, and the other is considered as guardian to all the rest of the brothers and the first has a share in the other half, as all the brothers (L. C.).

13. A said to B eat with me and it was not specified about payment, B, must pay for the meal, except when B is a poor man or an orphan which every one gives him eat for nothing, then, even it was not specified without payment B is free (Ramo).

## CHAPTER 247.

1. One sends from abroad the sea articles and commands that it shall be given to his sons and he has sons and daughters, it must be given to both, each one which is possible to used by the sons like books or ammution, it must be given to them, and which can be used by the daughters, namely, dyed silk, dresses, rings it belongs to the daughters, if it is such an article which it can be used by both of them, it belongs to the sons (B. B. 143).

2. The same rule applies when one sends articles

for the use of his family without specifying to whom it shall be given, and it was such articles which could be used by the sons, it must be given to them, because it is understood that he send it for them, and articles which can be used by the daughters, it belongs to them, if however he has no daughter or has and they are married, it belongs to the wife or to the sons.

3. It is an opinion that this rule applies only, when the giver has no wife, if he has a wife, it is positive that it is sent to her, because the wife is considered in law like his body (Tur, L. C.).

4. A sick person commands that his fortune shall be given to his sons and he has only one son and daughter, the whole fortune belongs to the son, and even the daughter has sons, the estate does not belong to them, it is an opinion when it is no sons, and it is a grandson from the son, the estate belongs to him (Tur).

5. A commands that his whole fortune shall be given to his son B, but he must give a certain amount for each of his daughters, and one dies, and she left a son he is not bound to give the son of the daughter, because the command was only to the daughter, not to her son (Ramo).

6. When A commands my fortune shall belong to B and my son B, is entitled to a half and the son to a half divide it when a husband and wife made a condition that when one of them will die their fortune



shall be returned to both relatives they must divide the fortune equally (Ramo).

### CHAPTER 248.

1. If a sick person commands my fortune shall be given to B and when he died, shall it belong to C, when B sold the whole fortune, C cannot recover from the buyer, even he is forbidden to do this, if he did it, no charge can be made against him. But what is left from B after he dies, it belongs to C. If however B was one of the heirs, *e. g.*, he was a son when there is other sons, the whole fortune belongs to B, because he is a heir, even when it is given as a gift, it is considered an inheritance, and cannot be stopped, even he commands shall afterward be given to another (B. B. 137).

2. If the giver was in a sound condition, even he commands, to give to one of the heirs, and when he died to another to the other belongs only much was left from the first (B. B. 137).

3. If a sick person commands his fortune shall be given to B, and after he dies, it shall belong to C, and the first was one of the heirs, and he stipulated that he does not give it to him on account of inheritance, which cannot be stopped, but he gives it to him on account of a gift, shall may stopped. C can confirm what is left from B therefore, if the giver deposits the money by a bailee, and says give to my

son one shekel every week, not as an inheritance nor as a gift, and the rest of the fortune after he dies, shall belong to C, then only one shekel must be given, and not more, even it is insufficient for them (Kesuboth 70).

4. If A says his fortune to be given to B, and when he die, it shall belong to C, and after he dies it shall belong to D, when B dies, the fortune belongs to C, when C dies it belongs to D, if C dies before B, and B dies afterward, the fortune belongs to the heirs of B, because when may the estate belong to D, only when C possess it, but now, C does not possess it, account his deed therefore it not belong to D, nor to the inheritor of B (L. C.).

5. Even the law is if B sold the fortune the same cannot be recovered from the buyers. But it is forbidden to B to sell or to give the real, to others he only may use the fruit, until he dies, and afterward it belongs to C, and every one who gives advice to B to sell this fortune, is called wicked (B. B. 137).

6. When B violates and sells it to another, is valid, this holds good only when it is sold to a stranger. If however it is sold or give to one of his heirs, the transaction is invalid (L. C. 137).

7. The same rule applies when B gives the real as a gift, when he was on his sick bed even to a stranger, it is invalid, because the gift of sick man may confirm only after he is dead and then the real

belongs to C, at the time B becomes unconscious (L. C.).

8. If B has a debtor or a marriage contract, to pay and they request from the court to collect from this gift, even B lives, they are only entitled to collect from the fruit, not from the ground (Tur).

9. B dies and his debtor or his widow wishes to collect from the gift, cannot be collected from it even B made a mortgage, to his wife for her marriage contract she shall collect only from this fortune, it is ineffective because it belongs to C (L. C.).

10. If A states in his commonds, that his whole fortune shall belong to B, and when B dies, it shall belong to C from now, when B sold the fortune to K, C can recover the same from K, and the same rules applies when C dies before B, when B dies the fortune must be given to the heirs of C (Tur).

11. If A states that his whole fortune shall belong to B from now and when he will die, it shall belong to C from now, and after he will die, it shall belong to D from now, B and C are only entitled to use the fruit, and the ground belongs to D when the same is transferred to C, if however C dies before B, and the fortune was never reached to him the same must be returned to the heirs of A, because D cannot confirm the fortune only when C possess it before (Tur).

12. If A gives his fortune to B for a certain

length of time, and after the time expires, it shall belong to C, and B sold it in the meantime, C can recover the same from the buyers, because it was only given to B for a certain time (Ramo).

13. If a sick person commands that his whole fortune shall be given to a unmarried woman, and after she dies, it shall be given to B, and the woman marries, and her fortune is transferred to her husband as a dowry B cannot recover the fortune from the husband, because he is considered in the law as a buyer, (See Par. 5.)

14. If however it was given to a married woman when she dies, B may recover from the husband, because when it was given to her she was married, and she won the fortune on condition that after her death it shall belong to B and not to her husband. Therefore if she sold the fortune before she died to another it belongs to him (Kesuboth 95).

15. A commands that his whole fortune shall be given to his mother, and after her death, it shall be given to her heirs, and she has a married daughter, who died before her husband and the grandmother, the husband is not entitled to inherit the fortune. because it belongs to his wife, and she win of its possession only after she died, and such gain which come after her death does not belong to him, but when the daughter left issue, either sons or daughters, it belongs to them, because when it was com-



manded to the mother and her heirs, it is understood even to the heirs of the heirs (B. B. 125).

16. But when A says when the mother dies it shall belong to his daughter from now, then the husband is entitled to inherit the same fortune (L. C.).

17. A says that his personal property shall belong to B, everything which can be used belongs to B, but not wheat, or barley, etc., if it was said all my personal property shall belong to B, all belongs to him, even everything which is sometime removed, but not the bottom of the millstone, if it was stated all which can be moved, even the bottom of the millstone belongs to B (B. B. 150).

18. If A says that all my fortune I give to B, all personal, and real, clothing, cattle and fligel, frontiles, and books, it belongs to B, but when it is in the Five Scrolls of Law, it is a doubt in law if it is included among it or not, therefore if B seized the same, it cannot be recovered from him (L. C.).

19. If A gives four yards real to B, and through it he confirms to him all the personal property, either gold or silver, and all vessels, big or small, cotton or wool, silks and everything which is worth money, it belongs to B, but the rest real cannot be confirmed to B, because real cannot be confirmed true real (Rasbo).

20. If A gives his whole fortune to B, personal property, through taking possession of the real, and

he left for his heirs only five zus, and was in debts notes, if the gift was given when the giver was on his death bed, the note belongs to B, if however it was given when A was in a sound condition, because A did not write to B confirm to you all this notes, and they obligation, the notes belong to the heirs (Tur).

21. Even B was owes to A a debt in the same notes, he must pay, because A does not release the debts, but only confirms the same, and this is ineffective (Ramo).

## CHAPTER 249.

1. If A promises to give a small gift to B, and A withdraws, he is considered among the promise and not fulfilled, it is more preferable, that not received gifts, only to depend on the Lord, that he will give support and all the necessities as it is stated in Proverbs Chap. 17, who hates to receive presents he will live long (Kidushin 59).

## CHAPTER 250.

הלכות מתנת שכיב מרע

GIFT OF SICK PERSON.

1. By a gift of a sick person is not necessary to any settlement (Kinion) because his saying is considered in the law as if it was written a note and

delivered, no difference if he says it shall be given at once or given after he died (B. B. 156).

2. If a sick person appoint a guardian and give him the power to divide his fortune according to his own will, and his doing shall be legal, like his, it is two opinions, if it is effective or not, because at the time he died, his fortune is transferred to his heirs and his gifts is void (Ramo).

4. A was sick person and presented his whole fortune to B, and left nothing for his support, and even at the time was made a form of agreement (Kinion) when he became good recovered. The gift is void (B. B. 156).

5. If however he does not become good recovered, but he transfer from one sickness, into another and he dies from the second sickness. If at the time of the transfer, he was unable to lean on a stick and walk in street, even though he was able to walk at house, his gift is effective. If however he recovers from this sickness, and he was able to lean on a stick and walk in street, and after he becomes sick again from which he died, it must be proven by the expert doctors, if they declare that he died from the first sickness, the gift is effective. If he died from the second sickness, the gift is ineffective (Gitin 72).

6. If however he walked in street without a cane,

no proofs from the experts doctors are necessary, but his gift is void (L. C.).

7. This rule applies only by a transaction of a gift but when the same sick person has admitted that his fortune belongs to B, even he recovers afterward, he cannot withdraw (B. B. 149).

8. If the same sick person donated for charity or abandoned his whole fortune, if afterward he recovers the transaction becomes void (L. C. 148).

9. If the sick person sold a part of his fortune to B and afterward he recovers, the transaction is effective, if he sold all his fortune, and if the money is remains he can withdraw, if he spends the money the sale is effective (B. B. 149).

10. If A the sick person gives only a part of his fortune to B, such gift a form of agreement is necessary, and even after A dies, when no form of agreement was made, the gift is void and if a form of agreement was made, even A recovers, he cannot withdraw (L. C. 151).

11. A blind, or lame, or a short hand or which has a headache, or pain in his head or eyes, they consider in the eyes of law as healthy persons, and their transaction in buying or selling or gifts is valid, but the one who becomes paralytic on his whole body, and cannot walk on his feet and he must lie in bed, he is considered as a sick person (Rambam).

12. If a man becomes dumb and cannot talk, and



winks with his eyes or signifies with his hands, to give a gift to B, he must be examined by expert doctors if he is sane or insane. If he answers by things which are yes and says yes, or things to be answered no, and says no, his gift is effective, if his answer is wrong, the gift is ineffective.

13. An unconscious man's gift is effective (Gitin 71).

14. If a sick person stipulated at the time when he gave his gift, that he gives it because he thinks that he is going to die, or even he does not stipulate, but it is recognized by his acting, that it is given on account of deed, *e. g.*, he claims for his dying, even he gives a part of his fortune, it is effective, even without a form of agreement, when he dies afterward and when he recovers he may withdraw even a form of agreement was made and it was given only part of his fortune (B. B. 151).

15. One who takes a sea voyage or one who takes a journey in the wilderness, or one who becomes bound in fetters or who becomes unconscious, and when they command that a gift should be given to B, no form of agreement is necessary, because their saying is legal, as in Sec. 14, and it must be fulfilled, when he dies. If he recovers or becomes saved even it was a form of agreement, they can withdraw the gift (Gitin 66).

16. If it was stipulated by the sick person when

a part of his fortune was given as a gift on account of sickness, a form of agreement is not necessary, and if the giver recovers, he may withdraw, and if he dies, it belongs to the receiver, nor when a form of agreement was made even he died, the part cannot belong to the receiver, because perhaps the giver's wish shall be confirmed with the deliver of the deed gift, and no deed can be valid after death, except when it was written in a form of more legal (B. B. 151).

17. If a sick person writes his whole fortune and stipulates that he is giving all his fortune from now, and confirms to him at his lives time, the rule of a gift of healthy person prevails, and when the deed gift is delivered to the receiver, or they made a form of agreement from the giver, all belongs to the receiver, and he cannot withdraw (B. B. 151).

18. A sick person who gives all his fortune, even it is knowing that is all, a form of agreement is necessary, because maybe he has more goods abroad the sea, and this is only a part of his fortune when he recovers he cannot withdraw except it was stipulated that he gives all his fortune which he has to B, or it is known that he has no other fortune except this one then it is valid (B. B. 148).

19. If a sick person divided all his fortune to two or more persons and did not stop, was made between each other and no form of agreement was made. If he

died it belongs to the all receivers if he recovers he can withdraw from all, even if a form of agreement was made, because it is considered as one gift. If a stop was made between each and the other, then the first one, the rule as part gift prevails and a form of agreement must be made, and if he recovers he cannot withdraw, except the last one the rule of a gift for all of his fortune prevails, and a form of agreement is unnecessary, and when he recovers he can withdraw (B. B. 148).

20. When a sick person gives all his fortune and he withdraws a part of it, the whole gift is void (L. C.), and even it was given to two persons in one deed if he retracts from one, the whole gift is void, even for the other (Ramo).

21. When a sick person gives all his fortune to B and after he gives a part of the same to C to B, nothing belongs to him, even if the giver dies afterward, because he retracts from the gift, but to C if a form of agreement was made it belongs to him, even if the giver recovers, if no form of agreement was made, even the giver dies, it does not belong to him (L. C.).

22. If A gives a part of the fortune to B with a form of agreement (Kinion), and the rest to C, to B belongs the part, either the giver lives or dies, and to C, because it is a gift of all his fortune, if A dies it belongs to him, even there was no form of agreement.

If A recovers even though a form of agreement was made, he can withdraw (L. C.).

23. R and his wife made a condition, that if he dies before her, she shall become from his estate one-third, and his brother two-thirds, and the deed gift was delivered to the brother, and R becomes sick and commands that from the same two-thirds to give a part as gift to others, and he dies afterwards, and the brother wishes to destroy the will, because it was given to him before his claim is not effective, because R has the right to retract from the first will (Tur).

24. R dies and it is found that a deed gift of a certain field is bound of his shoulder in the name of B, even it is signed by witness and there was a form of agreement, to confirm it to B legally, it is ineffective, and the gift cannot be claimed by B, because we can think that R had in his mind before to deliver the gift to B and after change his mind, the same rule applies if R writes a note on his name that he owned a certain sum to B or to one of his sons, and deposits the notes to a bailee and it was not specified what shall be done with it, and R dies, the note cannot be collected (B. B. 135).

25. If R gives his personal property to B from now and after he dies, and after R dies the heirs claim B shall prove with witnesses that the personal property was at the time when the gift was given, perhaps the deceased bought it afterward, their claim



is not effective, because, we must say that it was found therein and it was then before (Rasbo).

### CHAPTER 251.

1. When one gives a gift when he was in a sick condition, and it was written in deed gift that is given either in his life or after his death, either the gift was a part of his fortune or all, it is considered as a gift of a sick person because it is written, either he dies and the gift cannot be confirmed only after the giver dies, because what is written in his life time is only to give him a good hope, that he will live. If however a healthy person writes in the deed gift that it is give either in life or after death, it is considered in the law as a healthy man's gift, and what is written after he dies this is only for a niceness of the gift deed (B. B. 153).

2. By a gift of a sick man must be mentioned in the deed that the giver dies from the same sickness, if it is not written so, and it cannot be proven by witnesses, even the giver died the gift is void, because perhaps, from the sickness he recovers and after he dies from another sickness, therefore when it is a doubt in the giving of the gift, the fortune must remain in the possession of the heirs until the receiver will bring witnesses that the giver died from the same sickness (L. C.).

3. By a case of personal property if the receiver

seized the fortune, he is believed on account of (migý) because he may say that it is his, therefore he is believed that the giver died from the same sickness (L. C.).

4. If the giver recovers and he wishes to withdraw from the gift because it was given on account of sickness, and the receiver pleads that it was given when he was in a healthy condition, the burden of proof lies on the shoulder of the receiver and the same law applies when it is a doubt in law if it belongs to the receiver or not, possession is nine points in the favor of the law and the fortune belongs to the giver (Ramo).

## CHAPTER 252.

1. The gift of a sick person is confirmed to the receiver only after he dies, and no other one can win either in personal or real property only after the giver dies, therefore if it is an obligation of the giver for support of a widow and children, even for the debt of the male children (see Code 4, Chap. 111) and the fortune is insufficient they may collect from the fortune because the obligation began at the time of the dying, and to the receiver is confirm after the death (B. B. 133).

2. It is a command to fulfill the bequest of a dead person even when the same was commanded at the time he was in a healthy condition. When the

article which was promised is deposited by a bailee (Kesuboth 69).

3. An article which belongs to the receiver and the heirs previously sold them the receiver of the gift, can recover the same of the buyers.

4. A swore or made a vow that he will give to B a certain sum, and before he gives it, he dies, the heirs are not bound to give the same, because he does not give it himself and did not command to his children to give, therefore they are free from the promises (Ramo).

## CHAPTER 253.

1. Two men visit a sick person during the day time, and he commands in their presence that the fortune shall be given to B, they only permitted to write the command, but not to decide about the trial, if afterward an argument occurs about the facts of the will the same must be tried before a court of three judges, and they shall decide if however, the sick person was visited by three judges, they are permitted, if they wish, write or to decide about the will and settle the transaction, if however it was during the night, even three judges, they must only write and not decide (B. B. 113).

2. When the visitors asks the sick person to whom shall your fortune be given after you are dead,

and he says I think I have a son abroad the sea, or my wife is pregnant, and I have just heard that my son died, and my wife is not pregnant, I give my fortune to B, and it is found afterwards that his son is living or his wife is pregnant, the gift is void, even afterward the son dies and the woman gives birth to a dead child (B. B. 147).

3. If a sick person commands that 200 zus shall be given to B his son or to my wife, or to my debtor, which it fit for them they are entitled to receive the 200 zus except the share of inherited or the amount mentioned in the marriage contract or the debt. If however he says give 200 zus to my sons instead of his share of the first born, or to my wife for her marriage contract, they are not entitled to both, only to one of them, and they have the right to choose which one is to receive the 200 zus or the share of the first born, etc. (L. C. 138).

4. A sick person commands to give 200 zus to B and 300 zus to C, and 400 zus to D, if the estate contains only the amount of 900 zus they must share according to his bequest, and no one of them has previously given, if a debt for the sick person is to pay it must be paid by all of them, *e. g.*, the debt is for \$450, the receiver of 200 must give 100 and the 300 must give 150, and the 400 must give 200 (L. C.).

5. If however he says give 200 zus to B, and after 300 zus to C, and after 400 zus to D, each one who



has preference in the will he is first in collection, therefore the debtor must collect first from the last one D, if it is insufficient, he may collect from C, and if it is insufficient, he may collect from B (L. C.).

6. If a sick person bequests a certain amount as a gift to B, and the rest he left for his heirs, and a debt of the sick is to be paid, it must be collected from the part of the heirs, if it is insufficient, it may collect from B. If however, he says give 200 zus to my son and 200 zus to B, the debtor must collect first from B, and if it is insufficient, he may collect from the son (Gitin 50).

7. A sick person bequests 200 zus to B and he shall marry my daughter, it is considered as two presents. The 200 zus is the first and the marrying of the daughter is the second gift, therefore B has the right to receive the 200 zus and refuses to marry the daughter. If however he says B shall marry my daughter and give 200 zus to him, it is considered like a condition, and if he will marry his daughter, he shall receive the 200 zus, and if B refuses to marry the daughter, he is not entitled to receive the 200 zus (Bicho 20).

8. A sick man commands that 200 zus from the value of my wine shall be given to B, and a part of the wine becomes sour, B must lose according to the value of his share, and the same rule applies when he says give 200 zus from the money which the wine

will bring when it will be sold, and the same was sold, and a part of the money is lost, B must stand a part of the loss according to his share (Gitin 65).

9. When a sick man says give 200 zus from my wine to B, then either a part becomes sour, or it is sold, and a part of the money is lost, the loss must be stood by the heirs, and B must receive the 200 zus without loss, and if the wine increases or decreases in price, the same belongs to the heirs (Kesuboth 54).

10. A sick man bequests to give B a house which contains the size of 100 barrels, and it was in his estate a house which contains not less than 120 barrels, B can receive the same even it is more than 20 barrels (B. B. 71).

11. When a sick man bequeaths that 400 zus shall be given to his daughter on her marriage contract, if it is a custom in the locality to write a double amount, she is only entitled to 200 zus and no more because he meant shall be written in the marriage contract 400 zus but the gift is only 200 zus (Tur).

12. If the sick person says give 200 zus to my daughter as her dowry she is not entitled to receive the money until she will marry and she will need the money and if she dies before, her heirs cannot collect the 200 zus. If however it was said give to my daughter 200 zus for the purpose of her dowry, the heirs are bound to give her the 200 zus at once, and if it becomes decreased or increased, it is on her

account, and if she dies before she marries, the money belongs to her heirs (B. B. 104).

13. When a sick man bequeaths his debts or his bailment which it is in the possession of B, give it to C, it is effective, and it must be given to him even without the ceremony of the three parties (see Code 2, Chap. 126), and if he says the note which I have to collect from B, give it to C, it is valid, when the note is all his fortune, even without writing or delivering the note (see Code 1, Chap. 66) and even the note is not replied and the heirs cannot release the note and even without a form of agreement. But when the note is only a part of the fortune a form of agreement is necessary (B. B. 148).

14. When a sick man bequeaths that B shall live in my house or he shall eat the fruit of my date tree, it is ineffective, because he does not confirm the house or the tree for this purpose and the leaving of the premises and the eating of the fruit of the date tree is a thing which is inanimate. (See Code 5, Chap. 212, Sec. 1.)

15. A sick person says one date tree to give to B and the estate contains two half date trees, *e. g.*, two trees were planted in partnership with another, B is entitled to the two halves, because it is not one date tree in this fortune. If the estate contains one date tree if he must receive the two halves or not, it is two opinions (Tur, Kesuboth 109).

16. A sick person says give 200 zus to the poor or Five Scrolls of Law to a Synagogue, it must be given to the poor of his city, or to the Synagogue which he is a often visitor (B. B. 44).

17. A sick person bequests my fortune shall be given to B and C, they must divide the fortune equally and even if there was 100, the same rule prevails when he says my fortune should be given to B, and to my sons, B must take a half and all the sons a half (Tur).

18. When a sick person commands my fortune shall be given to B and C and to the sons of D, B and C takes half and the sons of D a half.

19. When a sick person commands give a part of my fortune to B and does not specify how much shall be the part, there is two opinions, one holds that a sixteenth belongs to B and one holds that a quarter belongs to B (B. B. 63).

20. A sick person says when my wife has a boy he shall take 100 zus and if a girl she shall take 200 zus, it must be fulfilled according to his will. If she has twins, a boy and a girl, the boy gets 100 zus and the girl 200 zus. If she has a hermit he must receive only 100 zus.

21. A sick person commands if my wife has a male, he shall receive from my fortune two-thirds, and my brother one-third, and if he has a female, she shall have one-third, and my brother two-thirds,



and afterward she has twins, a boy and a girl, the will becomes void, and the estate must be divided according to the Torah Law and all belongs to the son.

22. Another opinion states regarding this case that the estate must be divided in seven parts, four parts to the son, two parts to the brother, and one part to the daughter.

23. A sick person commands that no julege shall be held when he dies, it must be obeyed, if he commands that he shall not be buried from his fortune, he must not be heard, but the heirs must be compelled to extend the expenses for the burial

24. A gives many gifts to different persons, and leaves a small amount to his heirs, and he dies, the expense of the burial must be paid by the heirs.

25. The will which is made by the Tribunal Law Court is legal.

26. When a sick person bequests that my fortune shall belong to the sons of C, who will be born, and if there is none born it shall belong to the sons of D, and sons D's take possession of the estate, and after he dies, children are born to C, the estate does not belong to either one of them, to C's sons, because they were not born at the time the will was made, and to the sons of D cannot belong, because it was given to them on condition when C will have no children and now C has children and the estate must return to the heirs (Ramo).

## CHAPTER 254.

1. Even the gift of a sick person is effective without a form of agreement, if the sick person requests that a form of agreement shall be made it must be obeyed, even on the day of Saturday, which is forbidden to make a form of agreement in such case is permitted, because it is here unnecessary (B. B. 156).

2. It is an opinion even when the sick person bequeaths his whole fortune to B, and stipulates in case he will recover he shall not withdraw, it is permitted to make a form of agreement, even the transaction takes place on Saturday (Tur).

## CHAPTER 255.

1. When a sick person in the presence of witnesses said I have 100 zus in the hands of B, they must write it in a note form, even they don't know if he says the truth, therefore when the heirs wish to collect the same amount they must prove by witness or evidence (B. B. 108).

2. When a sick man says, that B has by me 100 zus, when the sick man commands to pay the 100 zus to B, it must be fulfilled, but when he only says that B has 100 zus by him the same cannot be given be-

cause maybe he says only that his heirs shall not appear as rich, if however, it was said in regard of admission, *e. g.*, when he has no heirs or he admits in right way it must be given or when he writes in a note form that all his fortune belongs to B, it is effective, and we could not say that it was said on account of no appearing as rich (Tur).

3. When a man bequeaths all his fortune for holy purposes and afterward he claims that he owed 100 zus to B or this vessel belongs to him, he is unbelieved because perhaps they both wish to make some conspiracy on the fortune which belongs to the holy purposes (Rambam).

4. If a sick person bequeaths his fortune for holy purposes, and he says that 100 zus or the vessel belongs to B he is believed, because no man will make a conspiracy at the time when he is ready to die (Erichin 23).

5. Therefore, if he commands that 100 zus shall be given to B he can receive it even without an oath, if it was no command B cannot be given except when it was in his hands, an acknowledged note, then B is entitled to collect from the fortune belonging to the holy purposes on account of the note (L. C.).

6. If after he bequeaths his fortune to the holy purposes and he commands that 100 zus shall be given to B, he is not to be heard, but if B has an acknowledged note, he can collect with an oath from the

redeemer, but not from the holy purposes (L. C.).

7. When he commands that B has 100 zus, in my hands, and the heirs replied that they paid already there is two opinions, if they are believed or not, because the father does not command to give them and how they know to pay.

8. If the father commands that 100 zus shall be given to B and the heirs replied that they give already, they believed with an oath (Hises) (L. C.).

9. When a sick person admitted that B has in his hands 100 zus and the heirs replied that the father repeated that he did pay already, they are believed, and they must receive an oath (Hises). If however the father commands that 100 zus shall be given to B, the heirs are not believed to say that the father repeated that he pay before he admitted (B. M. 17).

10. When a sick person on account of his dying condition, commands to give 100 zus to B, and the heirs sold the whole fortune and B has no from which to collect, he is entitled to collect from the conveyed property, and the heirs are not believed to say that they pay. When the will is in the hands of B, if the will is not in the hands of B, they are believed to say that they pay, and if they say that it is not paid, they are not believed on account of conspiracy (Tur).

11. If a son saw that the father hid his money



and says, this belongs to B, or to the holy purposes, if it is recognized that his saying is on account of a will, it must be fulfilled, if however it was said on account he shall not appear as rich, his command need not be obeyed (Sanhadrin 30).

12. If one say that he sees the father before he died hide money and said that it belonged to B, or to the holy purposes, if it was hid in such place which the one was able to take it, he is believed, and if not, he is not believed (L. C.).

13. If it was entrusted articles to the father and he dies and the sons not know where he put it, and he dreamt that it lies in so or so place, and so much is there, and it belongs to B or to the holy purposes, and the son finds it in the same place and the same amount, the evidence of the dream cannot be taken as a consideration, and the money belongs to the son (Sanhadrin 30).

## CHAPTER 256.

1. When a sick person admitted that a certain sum of money belongs to B, and commands that it shall be given to him, even the sick is a convert to Judaism, and he admitted to his son who was born before he was converted, it is effective, if however the sick person commanded that a part of his money shall be given for purposes, which is a sin, it is not effective and shall not be fulfilled (B. B. 149).

## CHAPTER 257.

1. When a father made a will that a certain field shall belong to his son after his death then the ground belongs to the son from the date of the agreement and the fruit belongs to the father until he died, therefore the father is forbidden to sell the field because it is written to the son and the son is forbidden to sell the same because the field is in the possession of the father (B. B. 136).

2. If the father dies, and left fruit, which is cleaved to the field, it belongs to the son, if the same was cut or they become ripe and the times arrive for it to be cut, it belongs to the heirs. If, however, the son sold his title in the field to another, the same fruit even when it does not become ripe, belongs to the heirs, and the buyer must give to them the value of the fruit, which was worth at the time the father died, or the heirs have the right to leave the fruit there until they become ripe, and afterwards they need not to give anything to the buyers for it (Ramo).

3. If the father violates and sells it, the fruit belongs to the buyers, until he dies, and when the father dies, the son can recover from the buyers the field, and if it was fruit which cleaves to the ground, they must be appraised, and the son must pay for it (L. C.).

4. If it was there cut fruit, or fruit which became ripe, it belongs to the buyers (L. C.).

5. If the son sells it, the buyers cannot take possession until the father dies.

6. If the son sells it before the father dies, and he dies before the father, and afterward the father dies, the transaction is valid at the time of the father's death. (See Chap. 211, Code 5.)

7. If a healthy person writes in a deed gift from now and after my death, I give to B a gift, it is considered like a sick gift which cannot be confirmed to the receiver only after death, even the body of the real belongs to the receiver from now, and the giver cannot withdraw, the fruit does not belong to the receiver only after the giver will die (B. B. 135).

8. If he writes in the gift deed from now, if I will not retract until after my death, I give a gift to B, it is considered like a gift of a sick person, and he can withdraw all his life time even from the body of the real (L. C.).

9. If a healthy person wishes to divide his fortune after he dies to avoid the quarrel among the heirs, and he wishes to make a will, at the time when he is healthy, he must make a form of agreement, and even when a form of agreement is made, it is ineffective if he wishes to give an article which is not in his possession, because no man can confirm an article which it is not in his possession, but he may

give it with an admission to each of them that he owes to him a certain sum (Ramo).

### CHAPTER 258.

1. When in gift deed is written that the field shall belong to B after his death, either it was written that a form of agreement is made thereby, either it is not so written, as long as the date is written when the transaction was made, and at the time he was alive, it is effective and the field belongs to B after the giver dies, because it is written a date (B. B. 136).

2. If it is written a form of agreement in the gift deed the body of the field belongs to the receiver at the same time.

### CHAPTER 259.

הלכות אבידה ומציאה

#### THE LAW OF LOSS AND FOUND.

Thou shalt not see thy brother's ox or his lamb go astray and withdraw thyself from them thou shalt surely bring them back unto the brother. But if thy brother be not nigh unto them or thou know him not then shalt thou take it unto thy own house and it shall remain with thee until the brother inquire after it and then shalt thou restore it to him.

Likewise shalt thou do with his ass and likewise



thou do with every lost thing of thy brother which may have been lost to him and which thou hast found. Thou are not at liberty to withdraw thyself (Deuteronomy 22. 1, 2, 3).

(Of the following chapters this law is based.)

1. If you see a lost article which belongs to your brother you are bound to return it to the owner (B. M. 26).

2. The loss must be such an article which can be recognized that it is a loss, and must have the value of one peruta (one cent U. S.), and it must be honorable for the finder to trouble himself about it, and it must contain a mark, if one of the conditions is missing he is not bound to return it (L. C.).

3. If one saves a sheep from a lion or bear or an article which becomes stranded by the sea, and the owner is unable to save them it belongs to him, even the owner stands and cries that is his.

If it is in the sea such dams, which holds up everything which swims, then it belongs to the owner (B. M. 24).

4. If there is a rule of the government about such loss, it must be obeyed (B. K. 117).

5. Chickens or geese which fly away from their owner and it is impossible for the owner to restore them they are considered as abandoned and each one that takes possession of them they belong to him (Ramo).

6. If A sees that an overflow starts to flow over the field of B, he is bound to save it, if it is in his power (B. M. 31).

## CHAPTER 260.

1. When A finds an article in a pile or in an old wall, and it is not known who built the same, and even one keeps his premises, there for a long time, and it was not his fathers and the article is rusty, and is found at the bottom of the house, and can be seen that it is hidden a long time, it belongs to the finder (B. M. 25).

2. A hired premises from B, and B lives in the same and A finds there a hidden treasure, it is two opinions, one holds that it must be divided equally between A and B, and one states that all belongs to B (Tur).

3. A finds money in a store, when it was found near the counter it belongs to the finder, but when it is found between the counter and the shelves, it belongs to the store keeper, if it is found on the counter, there is two opinions, one holds that it belongs to the finder, and one holds that it belongs to the store keeper. (The same rule applies if it is found in a place of money exchange.) (L. C.).

4. When A finds figs in a road though a field with figs is nearby, it belongs to him (B. M. 31).

5. This same rule is when A finds figs on the road when the twig of a fig tree is hanging over the road, because the fig when they fall down become dusty, therefore the owner renounces his right to them and therefore the same belong to A.

6. When scattered fruit is found on road to the threshing place, if it is scattered one gallon in four yards the width, it belongs to the finder, because the owner refused to collect it, when it is so much scattered, if however, it was spread in less than four yards, it cannot be touched, because maybe the owner purposely left it (L. C. 21).

7. If there was half a gallon scattered within two yards the width, or two gallons in eight yards, or the one gallon fruit was of a different kind fruit, *e. g.*, figs or poppy seeds, there is a doubt in law if it belongs to the finder or not, therefore he shall not touch it, and if he takes it, he is not bound to proclaim it (L. C.).

8. When pigeons, which are tied found, and cannot fly, but are able to jump, if it is in fifty yards to the nest, it belongs to the owner of the nest, if it is after fifty yards, it belongs to the finder, because it is positive that the pigeons will not jump more than fifty yards from its nest (B. B. 23).

9. It is found between two nests, it belongs to nearest it if is equal, it must be divided, if in one nest there are more pigeons, than the other it belongs

to the one who is more in count, even he is further than the other (L. C.).

10. If the pigeons are able to fly it belongs to the finder (L. C.).

11. If one finds an article either it has a mark or not, and is recognized that it is left purposely, it is forbidden to touch, because it may be that the owner left it until he will return, and if there is no mark, he make him lose his money. If on the article there is a mark he must trouble to give this mark before he recovers, therefore it is forbidden for the finder to touch it, except when he finds it in a lost condition, and even if he is in doubt, if the article is lost or left, he is forbidden to touch it, and if he violates and takes it, he is forbidden to return it to the same place, and if it is an article without a mark, it belongs to him, and he is not bound to return, and if it is an article with a mark, even if it is a doubt if it was lost or left, either it is found in a public or private highway, he is found to proclaim it (B. M. 25).

12. When a coat is found or a hatchet, lying near a fence, he shall not touch it, because it is understood that somebody left it purposely if the same is found in a public highway he must take it and proclaim it (L. C. 31).

13. When pigeons are found tied with their wings, and they jumped behind the fence or in the



road of the field, he shall not touch it, because perhaps the owner left it purposely, and if he takes it, it belongs to him. If they are bound with a mark band or they lay in the right place, he is bound to proclaim it (L. C.).

14. When a covered vessel is found in a garbage plant, and this plant is not apt to be removed it shall not be touched. If however the plant is apt to be removed, and it is decided that it shall be removed even if the vessel is found covered, he must take it and proclaim it. The same rule applies if it was a small vessel, which is possible to sweep it with a broom while cleaning the house, *e. g.*, knife or fork, etc., he must take it and proclaim it (L. C.).

## CHAPTER 261.

1. When an ass or a cow is feeding by the road side during the day time, it is not considered as lost, but if it is there during the night or by the end of the day, three days each after the other it is considered as lost, and the finder must proclaim it (B. M. 30).

2. When a cow is seen running, on the road, and its face is towards the city, it is not considered as lost, but if she is facing to the field, it is considered as lost (L. C.).

3. When a cow is found feeding between the wine gardens she must be returned on account of the loss of the gardens (L. C.).

4. When a cow is found in a public highway if she is standing he must return her, if she is feeding on the grass or she is standing in a stable which is unsafe, but she cannot be lost, he shall not touch her because it is not considered as lost (L. C. 32).

5. If one purposely destroys his money, no one is bound to take care for it, *e. g.*, he left his cow in an open stable, or threw his money in a public highway and went away, although it is forbidden to the observer to take it for himself, if he takes it he is not bound to return it (B. M. 25).

6. There is an opinion in such a case that the observer may take it for himself (Ramo).

## CHAPTER 262.

1. Such article which is not the value of one peruta at the time when it was found and at the time when it was lost, he is not bound to return it. If at the time it was lost, he was in the value of a peruta but at the time it was found, the value is decreased, and is not worth a peruta, or at the time of the loss it was not worth a peruta, and afterward it becomes increased in value, and is worth one peruta at the time when it is found, he is not bound to return it, if however at the time of the loss, and at the time it was found, it was worth a peruta, but in the meantime it was not worth a peruta, or she becomes after-

ward decreased in value, he is bound to proclaim it (B. M. 27).

2. Even an article which is worth a certain sum, but it is belong to many partners, which each share is not worth a peruta, he is not bound to return it (L. C.).

3. This rule applies only when it is positive that all them is partners in the article, if however he saw an article or coin, fall down from three persons and the article is only the value of two perutas, he is bound to return the same because perhaps one released the share to the two and it is one peruta to each one. If afterward it is found that the partner not released to the other his share the same belongs to him, even when it comes to his hand he does not know that is not released. If it was worth less than two perutas it belongs to him and we must not think may be the two released to the one (L. C.).

4. The finder must proclaim only such loss which it is possible for the loser to give a mark in the body of the article or in his place where it was lays or in his bond or in his count, or in his measure or in weight. If it is no mark in the article or by the place because it is recognized that is not left purposely if it is such article which it is possible that the owner knew when it fell down from his pocket, either account his heavy or on account his dear and every loser renounced his right of ownership of the

article because it is no mark in it and this come to his hand legal if it comes in his hands before the owner renounced his right of ownership even afterward he renounced he must return, because it come to his hand illegal (B. M. 21).

5. When one finds an article which the loser renounced his right of ownership, *e. g.*, he said why to my risk of my pocket even it is in a mark it belongs to the finder, this same rule is when it is found an article which it is lost a long time, from his owner and they renounced ownership of it, it belongs to the finder even it is a mark in the body or in the place where he lives (B. M. 23).

6. Therefore if one finds scattered coins, posed figs or bakers loaves of bread, strings of fish, pieces of meat, strings of wool, naturally not dyed, and purple wool coming in strips it belongs to him because for this article the loser know when it fell down and he renounced the ownership from it. If he found fruit scattered, if it is recognized that it is left purposely he shall not be touched but if it is a loss it belongs to him (L. C.).

7. If one finds home made loaves of bread, strips of wool which is dyed, pieces of meat, pieces of fish, which contain a mark, it must be proclaimed when it is found.

8. Small sheaves in a public highway it belongs to him if it is found in a private way, if it is recog-



nized that it is lost, it belongs to him, if it is understood that it is left purposely he must proclaim because even it is not mark in them, but the place can be considered as a mark.

9. If it is found big sheaves, either in a public or private highway it must be proclaimed (L. C.).

10. If it is found heaps fruit or fruit in a vessel or a vessel containing nothing, money in a purse or a purse containing nothing, heaps of fruit, heaps of coin, three coin, one on the top of the other, it must be proclaimed by the finder (L. C.).

11. If the coin is found scattered, even a part of them is rest each of the other it belongs to him (B. M. 21).

12. When it is found three coins lay like a big building, or one on one side and one on the other side and one on the top and it is possible to put a piece of wood among them and raise all at once it must be proclaimed (L. C. 25).

13. If it lays like a ring or like three feet, it is a doubt in the law if it belongs to him or not and he is forbidden to take it (L. C.).

14. A claim that a certain coin which is found by B, is his and as evidence he gives a mark that the seal of a certain King is signed of her, or his name is written on the coin with such proves he cannot recover the coin from B, because B may claim that you spend

the same coin for personal purposes and the other lost it (L. C.).

15. When A saw a coin fall down from the pocket of B in the sand and B brought a sieve, to sieve the sand and looked for the coin when afterwards it is found by A, it belongs to him because B renounced his ownership of it (L. C. 26).

16. A finds a fig cake and inside was a piece of vessel, or a loaf of bread which there was coins, or a piece of meat which was an unusually different cut, a piece of fish bitten, because it is an unusual of the others the finder is bound to proclaim it because this is extra made for a mark. But a piece of meat which is not unusual cut, it belongs to the finder because if he will say that it was from the head or from the neck, this is no mark for the return (B. M. 21).

17. A finds needles or nails, if it is only one it belongs to the finder. If it was two it must be proclaimed. Because they cannot be considered as a mark (L. C. 24).

18. A bought fruit, or fruit was sent to him as gift, from B, and A finds money therein, if this money was tied up in a package he must proclaim it. If it was scattered it belongs to him (B. M. 26).

19. This law applies only when B is a merchant who buys from different persons. If, however, B was threshing the fruit from his own field, the money must be returned to B (L. C.).

20. A finds an ass and his saddle on him, the one which gives a mark on the saddle, the ass must be returned to him also.

21. A finds a vessel and before of it, is fruit, the fruit belongs to the finder and the vessel must be proclaimed by the finder. Because we can thought that the vessel with the fruits belongs to a different persons. If it is understood that the fruit fell out of the vessel, *e. g.*, if the front is to the fruit, it belongs to the man of the vessel; if the back of the vessel is to the fruit, it belongs to him; if it was in the vessel dams, even the front is to the fruit, it belongs to the finder because if it was fallen from the vessel it would have left some in (L. C. 25).

22. If it was a part of the fruit in the vessel and the rest on the ground, it must be proclaimed by the finder (L. C.).

23. When A find a purse and in its front is scattered money, the money belongs to the finder and the purse must be proclaimed. And if it is understood that it fell down from the purse it must be proclaimed (L. C.).

24. A finds a new vessel which all kind are the same and no mark may be given of it, it belongs to A. If it is such vessel which may be recognized by seeing, it must be proclaimed and surrendered to a learned person who has a good reputation that he says the truth and never says a lie, even if he is unable to give

a mark only he recognizes it by seeing that it is his. It must be returned to him (L. C. 23).

### CHAPTER 263.

If one finds a sack or a big basket, and he is an old honorable man, which is unbecoming for him to carry, such thing he is not bound to trouble with them. The principle is when this article was his, he will carry it he must return the same to others. But when it was his, he refuse to trouble about it, he is free from the return of the loss (B. M. 29).

When the same old man find a cattle and he smite her to direct and return to her owner he must be finished because he began the commands (L. C.).

### CHAPTER 264.

1. A lost an article and he meet his loss and at the same time he meet a loss of B, if it is possible to attend to the two at once he is bound to do the same. If it is impossible to attend the two at once his loss has the precedence, because his loss has even the precedence for the Teachers or the Father's loss (B. M. 33).

2. It is a big command that each must direct himself with sympathetic judgment and shall some time leave his own loss and pay attention to the other (L. C.).



3. A meet the loss of his father and his teacher, and it is impossible to attend the two at once, if the father is an educated man, the father has the preference, if not the teacher when he teach for nothing. And he learned the most acknowledged from the teacher. The preference of the loss belongs to the teacher, because the father brought him into this world, but the teacher who was teaching him knowledge has brought him into the same world (L. C.).

4. If A left his loss and save the loss of B and his loss cannot be saved afterward, and A claimed the value of his loss from B he is only entitled to the compensation of a laborer, *e. g.*, a storm overflowed his ass and the ass of B's, his ass was worth one hundred zus, and B's ass is in the value of 200 zus, and A left his own ass and saved the ass of B and it was possible to save B's ass through a diver. A is only entitled to the wages of a diver, not more (B. K. 115).

5. If however A has stipulated before he started to save the ass that he wish 100 zus, the value of his ass for the services he is entitled to 100 zus even if his own ass is saved by itself (L. C.).

6. If A tries to save the ass and it was impossible, he is entitled to the labor of a diver, when it was stipulated before.

7. If it was not stipulated before even for the labor of a diver he is not entitled, because he did not save it (Ramo).

8. The same rule applies when the ass of B becomes saved of itself, he is entitled only to the labor of a diver, even A stipulated before that he shall receive 100 zus the value of his ass, and his ass is lost, A is only entitled to the labor of a diver not more. If it was no stipulation even such labor he cannot demand (Ramo).

9. When two persons was going in one road, one carries a barrel with wine, and the other a barrel with honey, and the barrel with honey starts to crack and before the honey is spilled into the road, the man carrying the wine spills his wine on the road and save the honey in his barrel, and he demand the value of his wine from the owner of the honey, he is only entitled to the compensation of a laborer, not more because it was not stipulated before. If it was stipulated before, he is entitled to his claim.

10. If however, it was impossible to save the honey without the man with the wine barrel, the honey belongs to him, because the honey becomes the title of abandonment (Ramo).

11. When one carries a barrel with honey and the barrel becomes cracked and the other one at the same time carries empty barrels, and he says to the man with the honey, I will save the honey on condition you shall give me a part of that honey or a certain sum and the honey man say, yes. Afterward when it is all saved, the honey man has the right to retract and

he can withdraw from his promise and the saver is only entitled to a laborer's compensation and for his empty barrel (L. C. 116).

12. If he has other work and he stopped from this work he is entitled to his damages (L. C.).

13. The same rule applies when one runs away from a danger, and it was a river to cross and he was promised to the captain of the boat a big sum for the crossing. Afterward he has the right to give him only the real price. If, however, he was a catcher of fish and he said to him, he shall stop his work and cross the river for him, he must pay all he promises (L. C., Yevamuth 106).

14. This rule applies only when it is a promise. If it was given before in advance, no one can demand the return of the money (B.).

## CHAPTER 265.

1. One which see a loss he is bound to return for nothing, if however he stops his work which is worth one diner and the loss is in the value of 100 dinerin, he cannot demand the diner which he lost on account of it. But it must be appraised much a man will be satisfied to take a rest and receive less than his labor, than when he worked (B. M. 30).

2. If it was stipulated before in the presence of the owner or the court, it must be fulfilled (L. C.).

## CHAPTER 266.

1. If A makes a vow he shall not have benefit from B and B lost an article, if there is no other benefit from the return, beside the command he is permitted. In a place where it is not a custom to receive compensation for the return of a loss. If it is some compensation, it is forbidden to return.

2. A lost a cat which bit and damaged small children. It is not necessary to return. But everyone which finds her is commanded to kill her and the skin belongs to him (B. K. 80).

3. If a father command to his son he shall not return the loss, he shall not obey him (B. M. 32).

## CHAPTER 267.

1. The finder must return the article lost to a safe place. If, however, he returns it to an unsafe place and it becomes lost from that place he must pay for the same (B. K. 56).

2. If he return it in the morning in such place which the owner go there, he is not bound any more to trouble with them because the owner saw her, even it is an unsafe place (L. C.).

3. If the loss was a live cattle it must be returned to a place which is safe then. Even without the consent of the owner, he is free (L. C.).

4. If A saw a cow which ran away from her



stable and he return her there, he need not to notify the owner (L. C.).

A return her and she run away even one hundred times he is bound to return her (B. M. 30).

5. One who find the loss must proclaim in the Synagogues or schools, that this kind of loss he find, *e. g.*, if he finds money he must proclaim who lost coin or suits or cattle, he shall come and give the marks and shall take it.

6. When the owner of the loss come and say the marks which not so improved shall not be returned to him until he must say the improved marks. If the man is a false or a bad reputation as liar, even when he says the improved marks, it cannot be returned to him until he brings witness that it is his (L. C.).

7. If two claim the loss and each of them give the same marks, it shall not be given to either of them, but the same must leave until one will admit to the other or they will arbitrate between each other (L. C.).

8. If one says the marks of the loss and the other brings a witness that it is his, it must be given to them that brings the witness, even they only testify that they recognize that it is his (B. M. 28).

9. If one says the marks and the other says the marks and one witness testifies that it is his, it is two opinions; one holds that it must be deposited until they will admit each to the other and one opinion

holds that the one contradict the one witness must receive an oath (see Code 1, Chap. 75) and if he refuses to take the oath it must be given to them which the one witness is in his favor (L. C.).

10. When A found a dress and one stated with witness that it was weaved for him and the other stated that it fell down from him, it must be given to the one which proves with the witness that it fell down from him (L. C.).

11. When one stated the measure of the long and the other stated the measure of the width, it must be given to the one which give the measures of the length, because the width can be marked at the time when the owner covered with her (L. C.).

12. When one stated the measure of the length and width, and the other stated the weight, it must be given to the one who states the weight (L. C.).

13. Where one stated the length is two yards and the width one yard, and the other stated that the length and the width is three yards, not mentioning much is the length and much is the width, it must be given to the one which mentions the length and the width separately (L. C.).

14. When the finder proclaims and no one come to claim the loss, the same must be left until Elihu the prophet will come and declare to whom it belongs (Tur).

15. So long the loss is in his possession if it is

stolen or lost, he is liable. Because he is considered as a compensation guardian (B. M. 29).

16. It is an opinion that the finder is considered like a guardian for nothing.

17. So long as the lost article is in his possession, he is bound to take care of it, shall not become spoiled and if it is a sheep he must cut her wool and even to cut the tail of the ox (L. C.).

18. If it is a blanket it must be shaken, one time in each thirty days (L. C.).

19. When he finds wooden vessels he can use them a little, for their welfare so shall not become rotten. If it is a copper vessel, it can be used with warm drinks, but he shall not put it on the fire because it can become lighter in weight. Silver vessels he can use them with cold drinks not in warm because it can become tarnished (L. C.).

20. Forks or hatchets shall be used on soft, not on hard material, gold vessels or glass or dresses of flax should not be touched until Elihu the prophet comes (B. M. 30).

21. When the loss is books, it is permitted to read in them one time in thirty days (L. C.).

22. When the loss is phylacteries he may appraise the value of it and take it for his own use (L. C.).

23. When the loss is live stock, if it is an article which works and supports, *e. g.*, an ass, or a cow, he

must take care of them twelve months from the day of the finding, and he can hire them and use the labor for the support (L. C. 28).

24. If the work is worth more than the support, the rest belongs to the owner and the same rule applies to a chicken which lays eggs, he must support it twelve months for the eggs and afterwards he can appraise the value and when the owner comes he is entitled to half of the value (L. C. 28).

25. Big rooster or geese, male, must be taken care of for thirty days, small ones and everything which the support is more than the gain, must be taken care for it only three days. Afterward it must be sold in the presence of the court (L. C.).

26. It is an opinion that he can appraise himself and take it for his own use (Ramo).

27. The money of the loss must be given to the finder and he is permitted to use them. Therefore, when an accident happens to it, he is bound to pay. Even if he does not use the money, because he is permitted to use it he is considered in the law as a borrower (L. C. 29).

28. This rule applies only when the loss contained an article which must be sold, and for his trouble he is permitted to use it. But when the loss is cash he is forbidden to use the same. Therefore, when an accident happens to them he is not liable



because he is considered like a compensation guardian (L. C.).

29. When the finder spent his own money for support of the loss, he is entitled to collect from the owner without an oath how much he spent (L. C. 28).

30. When A finds a purse with money and return it to B and the latter claims that it was two purses tied together and it is impossible when he find one, he shall not find the other and A claims he find only one, he is free of an oath (Gitin 45).

## CHAPTER 268.

1. Every loss which belongs to the finder is only when it arrives in the hand or in the possession of the finder, if however A saw the loss and even fall down on it, and B come previously and seized it from his underneath, it belongs to B (B. M. 10).

2. This rule applies only in a public highway, but in an alley it is two opinions: One holds it belongs to B even it is in the four yards of A because with his falling he refused to confirm with the possession of the four yards, the other opinion holds that it belongs to A because it is in his four yard (Ramo).

2-a. The four yards of each man which he stand by his side it is considered as his possession and if the lost article arrived near him and this happens in an alley or in the side of a public highway, it belongs

to him, and this is an enactment of the Rabbinical shall avoid quarrels. If however, it was found in a public highway or in a field which belongs to others the loss cannot be confirmed to A until the same must come to his own hand (B. M. 10).

3. If two persons come at once and some bargain fall in they four yards they must share equally (Ramo).

4. The court yard of each man which is guarded can confirm to him any bargain even without his consent. Therefore, if a bargain falls, *e. g.*, a dove fly there it belongs to the owner of the yard. If, however, the loss falls in a field or a garden which is not guarded, if the owner stand thereby and stated shall my field confirm to me the bargain, it belongs to him. If he was not standing there or not say, the field shall confirm to me the bargain, the bargain does not belong to him (L. C. 11).

5. If a merchant bought a bargain in the yard of A and A says my yard shall confirm to me the bargain, and B has the precedence and bought it for himself, it is an opinion that belongs to B because when the owner must buy it the yard cannot confirm to him. Another opinion holds that belongs to A, and when afterward another bargain come in the yard of B, and B say my yard shall confirm to me the bargain, and A bought it and B refuse to give the bargain to A, and A claims if the law is with the first

opinion, I am entitled to the second bargain, and if the law is with the other opinion I am entitled to the first bargain. If the first case was decided and this is a separate business possession is nine points in favor of the possessor, and the right is with B. If however there was no decision about the first case until it happen the other case, B must give one bargain to A in any way (Ramo).

6. A deer crippled and pigeons which cannot fly was in a field and the owners saw that others run after them, if the owner stands by the field and if he will run last he will catch it and he say that my field shall confirm to me the bargain, it belong to him. If it is impossible for him to catch it, then it belongs to the first who will catch it. If it was given to him as a gift and they are in his field it belongs to him, if the deer was not crippled and the pigeons was flying the field cannot confirm to him (B. M. 11).

7. A female's court yard and her four yards can confirm to her a bargain, however, a male minor cannot confirm to him the four yards and the court yard (B. M. 10).

## CHAPTER 269.

1. When A raise up an article with the idea to confirm it to B even if he does not notify it to him it belongs to B (B. M. 8).

2. If two persons raise up an article it belongs to both of them (L. C.).

3. If the raiser was deaf or insane or minor, B cannot confirm the article because it was raised by an insensible (L. C.).

4. When A was riding on a horse and he saw the article lost and he command to B he shall win for him the bargain, when B raises it, it belongs to A even if it is not arrived yet to A. If, however, A say give to me and before he give B, stated that he raised it for himself, it belongs to B. If after he delivers the bargain to A he stated that he had in his mind to win for himself, it is not effective (B. M. 10).

## CHAPTER 270.

1. A deaf or insane or minor finds a lost article, it is forbidden to take it away from them on account of the Rabbinical enactment. If, however, one seizes from their hand, the court cannot recover from him (Gitin 59).

2. The articles found by his son or daughter or his wife when they are supported by his table even if they are full age belongs to him. If, however, they are not supported by his table, even the son is a minor, it belongs to them (L. C.).

3. When an employee finds some loss either he was hired by the employer to do all kinds of work in



that day or either when he was hired to do a certain work, *e. g.*, to dig, weed, etc., it belongs to him. If, however, he was hired to collect lost articles, *e. g.*, the river receded and he was hired to collect fishes, even he find a purse with money it belongs to the owner (L. C.).

## CHAPTER 271.

1. If two persons see a lost camel or ass and they both take the precedence to drive or lead it, or one drives and the other leads, it belongs to both. This law only holds good by a camel but by an ass if one drives and one leads it belongs to the one which leads (B. M. 9).

2. A lost animal which one takes the precedence and hold her by the harness, the animal does not belong to him until he must lead or drive her, but the harness is confirmed to him (L. C.).

3. If one rides and one holds by the harness the animal and the harness which is on her face belongs to the rider and that which the holder keeps in his hand belongs to him and the rest not belongs to either of them and who will take precedence to take title of it is confirmed to him (L. C.).

## CHAPTER 272.

## הלכות פריקה ומעינה ודין הולכי דרכים

## THE LAW OF UNLOAD AND RELOAD.

“If thou see the ass of your enemy lying under his burden and wouldest forbear to unload him thou must not do so but thou shalt surely unload with him” (Exodus 23:5).

“Thou shalt not see thy brother’s ass or his ox fallen down by the way and withdraw thyself from them, thou shalt surely help him to lift them up again” (Deuteronomy 22:4).

(This law is based on the following chapter.)

1. When one meets his comrade on the road and his cattle are lying under her load either it was load on her the regular load or irregular load was placed on her then it is a command to unload from her (B. M. 32).

2. If the meeter was a Cohen (priest) and the cattle was lying in the cemetery upon which a Cohen is forbidden to pass, then he is free of the command (L. C.).

3. This same rule applies if the meeter was an old honorable man which on coming to him to unload or freeload if it was his own article he will unload or freeload it, he is bound to do the same for the other,

if he refuses to do such for his own use then he is free from the command.

4. When the old man wishes to do sympathy judgment, when he saw the other's cattle lying under a load of straw or wood, then there are two opinions if he is permitted to slander himself or not (L. C. 30).

5. Even he put the load on, and afterwards it fell down he is bound to put up again even one hundred times, therefore he must direct him on his way until one mile is reached except when the owner of the load says that he needs no more help (L. C.).

6. When the cattle is seen at a distance of about  $266 \frac{2}{3}$  yards from the place where he stands he is bound to pay attention to them, if it was further he is not bound (L. C.).

7. It is a command to unload for nothing but for a freeloading, and also for the direction of the one mile it is permitted to receive wages (L. C.).

8. If one finds a cattle lying under their load even if the owner is absent it is a command to unload the same. When the owner of the load is present and refuses to assist with the unloading and he stated to the meeter because it is of you the commands to unload, do it yourself. He is not bound to do it alone except when the owner is an old or sick person (B. M. 33).

9. If one meets two persons, one his ass lying under the load and the other needs to unload, the

preference is given to the one requiring reloading. This rule applies only when the both are friends or enemies. If one is a friend and the other is an enemy, even though he needs to be unloaded he is given the preference (L. C.).

10. When two expressmen are going in one direction and one of them his ass becomes troubled in the feet, or his cart is broken then the other is forbidden to pass away until the same is fixed. If the ass falls then it is permitted to pass away (Tur).

11. When two expressmen driving in a small road and it is impossible for the two to pass together, if one cart is empty and the other cart is loaded, the loaded cart is given the preference to pass the road. If the two carts are loaded or consist of drivers or empty, then they must make some arbitration among themselves (L. C. 32).

12. When two ships meet each other in a narrow river and if they pass together they both will sink and if they pass one by one they will be safe the same rule applies.

13. When two asses meet each other when they need to ascend the mountain and it is impossible for both to ascend together, then the one with the load has the preference. When one is to go far away and the other just to a near destination then the former has preference. If they both are to go the same distance then they must make a settlement among them-



selves for it is written in the Torah, with justice try your comrade (Leviticus 19:15).

14. If a company rests in the wilderness and bandits were to attack them and the company settled with them for a certain amount, they shall stop the attack, the amount must be contributed according to the means, not according to the appearance, *e. g.*, the man which possesses 1,000 zus must give twice as much as the man that possesses 500 zus. If however they hire a guide to show them the correct direction then it must be contributed half according to the means and the other half according to the appearance, *e. g.*, the expenditure of the guide was 1,000 zus 500 must be contributed according to the means and the other 500 zus according to the appearance, if it is a custom among the ship organizations about such cases it must be obeyed (B. K. 116).

15. Ass or ship owners may make rules to insure the loss of an ass or ship, in case of accident, each shall be replaced for his loss and in case of neglect he cannot blame. If the loser wishes to have the cash for the loss and refuses to buy another ass he is not entitled to it, because when he will have his ass or ship therein he will take more care of the guarding even if he had in the company one ass more, he cannot demand the cash for the lost one because when he will have two asses therein he will take more care in guarding (B. K. 116).

16. When two persons carrying loads by ships one having a load iron and one silver and the ship starts to sink and the captain orders them to cast a certain amount of the load into the sea, then it is one opinion (see Chap 264) that the owner of the iron must cast the entire amount ordered and the owner of the silver shall give a half for the value of the iron. If it happens that they cast the certain weight of silver into the sea, then the iron must be cast to the same amount of weight not according to the value of the silver (L. C.).

## CHAPTER 273.

הלכות הפקר ונכסי הגר

### LAW OF ABANDONMENT.

1. Every article which is abandoned, then any one which makes in it a settlement (Kinion) it belongs to him.

2. Abandonment is considered like a vow and therefore when a thing is abandoned it is forbidden to withdraw from it but he has the right to make a settlement in it and confirm the same (Nedarim 44).

3. If one abandoned an article only for the poor but not for the rich then it is not considered abandonment but it must be as an abandonment for all (L. C. 15).

4. If the article was abandoned without the pres-

ence of three persons there are two opinions if it is valid or not (L. C.).

5. When one finds an abandoned article and was guard and look on it and another make a settlement in it, according to law (see Chap. 192) the article belongs to the one making the right of settlement (Kinion) (B. M. 118).

6. The wilderness and the seas and the rivers and everything which is in, *e. g.*, the grass, the wood, the trees, etc., it is considered abandoned, and each one who takes title to it first it belongs to him (Rambam).

7. One caught fish or beast or birds from the rivers or from the seas so long as it does not belong to anyone it belongs to him but he is forbidden to catch in the field of another and if he violates the law and he caught, it belongs to the catcher.

8. If the same fish was caught even in a big net it belongs to the owner and the one which catches it from the net is considered as a robber (Chulin 141).

9. When A spreads a net in the sea and catches a fish or spreads a net in wilderness and catch a beast and B takes it from there B is considered as a robber by the Rabbinical enactment, if the net was a regular vessel the taker is considered as a robber even by the Torah law (Gitin 61).

10. When one spreads a net in the field belonging to another and catches beast or birds even this is forbidden to do so it belongs to him, if the owner of

the field stands thereby and says that my field shall confirm to me it belongs to the owner. The same rule applies if the field is fenced and guarded even if the owner does not stand by it belongs to the owner.

11. When fishes jump in a ship even at the time when she is sailing it belongs to the owner of the ship and no one has the right to take it away (B. M. 9).

## CHAPTER 274.

1. When Joshua divided the land of Palestine to the Jews he made with them a verbal agreement with ten conditions, and an extract of them is given herein.

2. If a swarm of bees belonging to A fly away and light on a tree belonging to B then it is permitted to A to cut the twig so that the bees are saved but A must pay for the twig according to the appraising of the court (B. K. 81).

3. If A and B go in one road, A carrying a barrel of honey and B a barrel of wine and the barrel of honey begins to crack and it is about to split, and A offers to B he shall pour out the wine and he will use the wine barrel for the honey and he will pay for the loss of the wine, B is bound to do so (L. C.).

4. A has an ass loaded with cotton and he died in the middle of the way and B has an ass loaded with wood and there is no other ass to hire and A says



to B that he shall unload his wood and reload his cotton instead and I will pay for the wood, B is bound to do so (L. C.).

## CHAPTER 275.

1. The taking possession of an abandoned article must be made with the idea that he shall confirm the same. If however it was made unaware it is ineffective, *e. g.*, a person ploughs in a field because he thinks that it is his and the field was abandoned, it does not belong to him (B. B. 53).

2. If however he ploughed in the field because he thought it was abandoned by A and it was abandoned by B then the possession is valid (L. C.).

3. If there are two fields abandoned then in each field there must be made possession. One possession is not enough for the two (L. C.).

(For Chapter 276 until 306, see Code 3, page 250.)

הכנים שורו לחצר חכירו שלא ברשות נגחו שורו של בעל החצר פטור וכן אם הזיקו בעל החצר פטור שיכול לומר כיון שהכניסו שלא לדעת לא ידעתי בו עד ששגיתי בו. ומיהו אם הזיקו לדעת חייב לשלם נזק שלם שאף על פי שיש לו רשות להוציא מרשותו אין לו רשות להזיקו. (ב"ק מ"ו, ח"מ שצ"ח)

פרה מעוברת שהזיקה גובה חצי נזק ממנה ומולדה מפני שהוא כגופה אפילו ליתא לפרה משתלם כל חצי נזק מהולד מפני שהוא כגופה אבל תרנגולת שהזיקה אינו גובה מכיצתה מפני שהביצה אינה כגופה אלא מובדלת ומופרשת. (ב"ק מ"ז, ח"מ שצ"ט)

שור שהיה רודף אחר שור אחר והזיק זה אומר שורך הזיק וזה אומר לא כי אלא במלע לקה המוציא מחבירו עליו הראיה. (ב"ק ל"ה, ח"מ ס' ת')

שור שנגח וחזר ונגח שור אחר הרי הניזק הראשון והבעלים כשותפים בו כיצד שור שוה ק"ק שנגח שור שוה ק"ק ואין הנבלה יפה כלום הניזק נוטל ק' ובעל השור ק'. חזר ונגח שור אחר שוה ק"ק ואין הנבלה יפה כלום האחרון נוטל מאה והניזק שלפניו עם הבעלים נוטלים חמשים חמשים וזו. (ב"ק נ"ו, ח"מ ת"א)

שני שוורין שחבלו זה בזה משלמין במותר חצי נזק מועדין משלמין במותר נזק שלם אחד תם ואחד מועד מועד בתם משלם במותר נזק שלם תם במועד משלם במותר חצי נזק. (ב"ק ל"ג, ח"מ ת"ב)

אמר שמואל אין שמין לא לגנב ולא לגזלן אלא לנזקין ואני אומר אף לשואל ואבא מודה לי. והלכתא אין שמין לא לגנב ולא לגזלן אבל לשואל שמין. (ב"ק י"א, ח"מ ת"ג)

שור שוה מאתים שנגח שור שוה מאתים והפחיתו חמשים ובשעת העמדה בדין השביח הניזק והרי הוא שוה ת' ואלמלא הנגיחה שהפחיתו היה שוה ת"ת בין שפטמו בין ששבח מאליו אנו נותן לו אלא כשעת הנזק. (ב"ק ל"ד, ח"מ ת"ד)

שור שחבל באדם אפילו נתכוון לבהמה וחבל באדם דינו כדין שור שהזיק לשור תם משלם חצי נזק ומועד נזק שלם ופטור מצער וריפוי ושבת ובושת שלא חייבה תורה בארבעה דברים אלו. אלא באדם. (ב"ק מ"ד, ח"מ ת"ה)

שור של ישראל שנגח לשור של הקדש ושל הקדש שנגח לשור של הדיוט פטור שנאמר שור רעהו ולא שור של הקדש, שור של ישראל שנגח לשור של נכרי פטור ושל נכרי שנגח לשור של ישראל בין תם או מועד משלם נזק שלם. (ב"ק ל"ז, ח"מ ת"ו)

תנו רבנן שור שהמית עד שלא נגמר דינו מכרו מכור הקדישו מוקדש שחטו בשרו מותר החזירו שומר לבית בעליו מוחזר משנגמר דינו מכרו אינו מכור הקדישו ואינו מוקדש שחטו בשרו אסור החזירו שומר לבית בעליו מוחזר, ר' יעקב אומר אף משנגמר דינו החזירו שומר לבעליו מוחזר. (ב"ק מ"ה, ח"מ ת"ז)

שום כסף שוה כסף בפני בית דין ועל פי עדים בני חורין בני ברית והנשים בכלל הנזק והניזק והמזיק בתשלומין. (ב"ק י"ד, ח"מ ת"ח) שור שהיה רועה ונמצא שור הרוג בצדו אף על פי שזה מנושך וזה מועד לנשך זה מנוגח וזה מועד ליגח אין אומרים בידוע שזה נגחו עד שיראו עדים כשרים. (ב"ב צ"ג, ח"מ ת"ח)

אין מגדלין בהמה דקה בארץ ישראל אבל מגדלין בסוריא ובמדבריות של ארץ ישראל.

אין מגדלין חזירין בכל מקום לא יגדל אדם את הכלב אלא אם כן היה קשור בשלשלת. (ב"ק ע"ט, ח"מ ת"ט)

משנה, החופר בור ברשות היחיד ופתחו ברשות הרבים או ברשות הרבים ופתחו לרשות היחיד, ברשות היחיד ופתחו לרשות היחיד אחר חייב. (ב"ק מ"ט, ח"מ ת"י)

משנה, בור של שני שותפין עבר עליו הראשון ולא כסהו והשני ולא כסהו השני חייב. (ב"ק נ', ח"מ ת"י)

תולדות הכור אכנו סכיננו ומשאו וכיוצא בהן שהניחם ברשות הרבים והזיקו במקומם בין הפקירן או לא הפקירן או שהניחם בראש גגו ונפלו ברוח מצויה והזיקו במקום אחר שנחו שדומין לבור ממונו שמזיק במקום שמונח שם לפיכך יש לו כל דיני בור לחייב נזק שלם מתחלתו על מיתת בהמה או הזיקה. ועל נזקי אדם בין נתקל באבן והזיק באבן בין נתקל בקרקע והזיק באבן, אבל אם נתקל באבן והזיק בקרקע פטור בו ממיתת אדם ונזקי כלים. וכן אם הניחם ברשותו והפקיר רשותו ולא הפקירם ונתקל בקרקע וניזק בתקלה זו והזיק חייב בעל התקלה. (ב"ק ג', ח"מ תי"א)

המניח את הכד ברשות הרבים ובא אחר ונתקל בו ושברו פטור שאין דרך בני אדם להתכונן בדרכים ואם הזיק בו בעל הכד חייב ואפילו הפקיר הכד שכל המפקיר נזקיו בדבר שאין לו רשות לעשות מתחלה חייב. (ב"ק כ"ז, ח"מ תי"ב)

שני קדרים שהיו מהלכים בדרך זה אחר זה ונתקל הראשון ונפל ונתקל השני בראשון, אם היה לראשון לעמוד ולא עמד חייב הראשון בנזקי שני שאעפ"י שהוא אנוס בשעת נפילה אינו אנוס בהיותו מוטל לדרך והרי הוא יכול לעמוד ואם לא היה לו לעמוד פטור ואף על פי שלא הותר לזה שנתקל בו מפני שהוא טרוד בנפשו. (ב"ק ל"א, ח"מ תי"ג)

לא יוציא אדם תבנו וקשו לרשות הרבים כדי שידושו ויעשו זבל ואם הוציאם קנסוהו חכמים שיהיו כהפקר וכל הקודם בהם זכה מעת שנידושו והשביחו ואם קדם אדם וזכה בהם משעת הוצאה לרשות הרבים אין מוציאין מידו ואף על פי שהם כהפקר אם הוזק בהם אדם או בהמה הרי זה המוציא חייב לשלם. (ב"ק ל', ח"מ תי"ד)  
המצניע את הקוץ ואת הזכוכית והגודר גדרו בקוצים והפריחו לרשות הרבים והוזק בהם ואחר חייב נזק שלם ואם גדר בקוצים כצמצום בתוך רשותו פטור לפי שאין דרך בני אדם להתחכך בכותלים. (ב"ק ל', ח"מ תט"ו)

הכותל והאילן שנפלו לרשות הרבים פטור מלשלם ואף על פי שהפקירם לפי שאין דומים לבור שהרי אין תחלתו להזיק ואם היו רעועין בית דין קובעים לו זמן לקוץ את האילן ולסתור את הכותל וכמה הזמן ל' יום נפלו בתוך הזמן והזיקו פטור לאחר הזמן חייב מפני שהשהה אותם. (ב"מ קי"ז, ח"מ תט"ז)

לא יסקל אדם מרשותו לרשות הרבים ואין עושין חלל תחת רשות הרבים ולא בורות ולא שיחין ולא מערות ואף על פי שהעגלה יכולה להלך על גביהן והיא טעונה אבנים שמא תפחת מלמטה שלא מדעתו והחופר בור לצרכי רבים מותר. (ב"ק נ', ח"מ תי"ז)  
אש הוא אב דכתיב כי תצא אש ומצאה קוצים והוא ממונו שהולך למרחוק ומזיק על ידי הרוח שמוליכו לפיכך כל הדומה לו ישהה ממונו והולך ומזיק הוא תולדתו ויש לו דין לפטור בו טמון. (ב"ק ב', ח"מ תי"ח)

כשבית דין נזקקין לגבות לניזק מנכסי המזיק גובין מהמטלטלין תחלה ואם לא היו לו מטלטלין כלל ואו שלא היו לו מטלטלין כנגד כל הנזק גובין השאר מהקרקע המעולה שבנכסי המזיק וכל זמן שימצא מטלטלין ואפילו סובין אין נזקקין לקרקע. (ב"ק י"ד, ח"מ תי"ט)  
אסור לאדם להכות חבירו ואם הכהו עובר בלאו שנאמר פן יוסיף ואם הקפידה תורה בהכאת רשע שלא להכותו יותר על רשעו קל וחומר בהכאת צדיק והמרים יד על חבירו להכותו אף על פי שלא הכהו נקרא רשע. (כתובות ל"ב, ח"מ ת"כ)

אינו חייב על הבושת עד שיתכוון לביישו והמכייש את חבירו שלא בכונה פטור לפיכך ישן שבייש פטור. (ב"ק פ"ו, ח"מ תכ"א)  
החובל בחבירו אף על פי שנתן לו ה' דברים אינו מתכפר לו עד שיבקש ממנו שימחול לו ואסור לנחבל להיות אכזרי מלמחול כי אין זה דרך זרע ישראל אלא כיון שבקש ממנו החובל ונתחנן לו פעם ראשונה ושניה וידוע שהוא שב מחטאו ימחול לו וכל הממחר למחול הרי זה משובח ורוח חכמים נוחה הימנו. (ב"ק צ"ב, ח"מ תכ"ב)





The Judge has the right to decide a case according to his understanding (see Code I, Chap. 12) and can use any ruse to find out the truth and it is based on the Talmud. B.B. 58. A man has ten sons and his wife admits that only one of them is legitimate. The man makes a will leaving his entire fortune to the one legitimate son. The man dies and afterward the ten sons all come before the Judge, each one claiming that he is the legitimate one and the entire fortune belongs to him. The Judge commands to each of the ten sons to go to the father's grave and knock on the headstone until the father will stand up and declare to which one the estate belongs. Nine of the sons go to the grave and knock, but one has the respect for the father and does not go. Afterward the Judge decides that the entire estate belongs to the son who did not knock on the grave. Another instance of this is in the story of King Solomon in the case of the two women, Kings 1:3. One woman said, "Pardon, my Lord, I and this woman dwell in one house and I was delivered of a child with her in the house, and it came to pass on the third day after I was delivered this woman also had a child. We were together and there was no stranger with us in the house and this woman's child died in the night because she had overlaid him. She arose in the middle of the night and took my son from beside me, while I was asleep, and laid him in her bosom and her dead son she laid in my bosom. And when I rose in the morning to give my son suck, behold he was dead, but when I looked at him carefully in the morning behold it was not my son whom I had borne."

And the other woman said, "It is not so. My son is the living one and thy son is the dead; and this one said it is not so, thy son is the dead and my son is the living." Thus they spoke before the King. Then said the King, "This one saith this is my son that liveth and thy son is dead, and the other said it is not so, thy son is the dead and my son is the living," and the King said, "Fetch me a sword," and they brought the sword before the King, and the King said, "Hew the living child in two parts and give one half to one and the other half to the other." Then spoke the woman whose son was the living unto the King, for her love had become enkindled for her son, and she said, "O pardon me, Lord, give her the living child and only do not slay it." But the other said, "Neither mine nor thine shall it be; hew it asunder." The King then answered and said, "Give her the living child and do not slay it, she is its mother."

The Midros Rabo, Solomon's Songs, says that one of these women was the mother-in-law and the other was the daughter-in-law and her husband died, and as the law says, in Code 4, page 508, Sec. 21, that when a husband dies and does not leave issue the widow is forbidden to re-marry without paying attention to the "barefoot" (Chlizo) and it is well known that the mother-in-law hates the daughter-in-law (Yavomath 117), and therefore, the mother-in-law desires that her child shall be the live one and the daughter-in-law's child shall be the dead one, and she shall be forbidden to re-marry until the minor will become of age, and he will be able to give attention to the ceremony of the "Barefooted" (Chlizo),

and the King understood from the saying of the mother-in-law because she gave the preference in her pleading that the dead child belonged to the other and the live child to her, and the right mother stated in her plea that the live child belonged to her and the dead one to the other. From this point the King understood that the daughter-in-law is the right mother and the mother-in-law is the false one, and therefore, he commanded to hew the child to prove for the world which one is in the right.

The law of Migy: When a litigant pleads before the court one plea, and he could have a better plea and he not claim the better one, therefore, he is believed with the plea. However, if witness will contradict the other plea he is not believed in that plea.

(Supplement to Page 243.)

In this connection, the Talmud relates (Sanhedrin 93), that a certain judge at a trial, when the two parties finished the testimony, he not only used for evidence witnesses or oaths, but he also smelled whether the parties were telling the truth or not; and we hope that when the annointed of the Lord will come, he will be so educated that he will be able to decide a trial at a moment's notice, possessing the power of smelling whether the parties are telling the truth (Isaiah 11-3). That means, the soul has the same faculties as the body and she needs to eat and



drink the same like the body and she feels pain and bad smell as the body does. The eat and drink of the soul means the learning and the fulfillment of the commandments (see Exodus 24-11) and when one of the commandments is violated then the soul is like a cripple, and if a man thinks to do some iniquity it is just as if there was a bad odor from the mouth. No one can be an expert to decide a trial with such proof, but only those that have the highest education and intellect and fear of the Lord. Therefore, the Prophet Isaiah said that the "Messiah" will be so educated that he will be able to decide cases with the power of smell, and the High Priest also had the understanding and the intelligence to decide a case with the same faculty.



## CHAPTER 307.

## הלכות שוכר

## LAW OF HIRER AND HIS OBLIGATION.

If a man do delivers unto his neighbor money or vessels to guard and it is stolen out of the man's house if the thief be found he shall pay double. If the thief be not found then shall the master of the house be brought unto the judges to swear that he has not stretched out his hand against his neighbor's goods.

If a man deliver unto his neighbor an ass or an ox or a lamb or any beast to guard and it dies or be hurt or driven away no man seeing it then shall an oath of the Lord be between both of them that he have not stretched out his hand against his neighbor's goods and the owner of it shall accept this and he shall not pay, but if it be stolen from him he shall pay to the owners thereof.

If it is torn in pieces then let him bring evidence that it is torn and he is free.

If a man borrow aught of his neighbor and it be hurt or die, the owner thereof not being with it, he shall pay for it (Exodus 22:6).

(Of the following chapter the law is based.)

The law of a hirer is included in the law of compensation guardian (B. M. 80).

1. When one hires a cow or vessel and it is stolen

or lost he is bound to pay for it, if the same happened by accident, he is free (L. C.).

2. When A promises to hire an article to B, A can withdraw from the promise before a settlement is made (Kinion), if the article is lost or stolen he is not obligated to pay. Another opinion holds that at the time when A, with the consent of B stopped his guarding of them article B is obligated to pay for it when it is stolen or lost (Tur).

3. B hires a house from A and put in wheat and the same was there a long time and on account of it the walls became decayed and they fell, which caused damages to A, and his tenants and B was notified to remove the same and he refused to do so he is bound to pay for all the damages because he was negligent.

4. The hirer is forbidden to hire or borrow the article to another and if he hires or borrows (see Chap. 291, Code 3) (L. C.).

5. When A hires a cow from B and lends her to C and she died by nature or by accident in which way that A is bound to pay for it, the same remuneration belongs to B, because A cannot make a bargain with another's cow. When B say to A if you wish lend the cow to C but I want that you shall be responsible for it, then the remuneration belongs to A (B. M. 35).

6. If A hires a cow from B and account of A's negligence the cow becomes wounded not on account

of her work. Even if the cow must stop work a few days account it, A is not bound to pay for them because the wound will heal. Another opinion states that A is bound to pay on account of his negligence. The first opinion holds the precedence in the law (Gitin 42).

7. A man is forbidden to work with a cow at night and to hire her for the day time (Rambam).

### CHAPTER 308.

1. If A hires a horse to ride a male he is forbidden to ride a woman on her. If A violates and puts a woman on the horse and the latter becomes damaged, there are two opinions, if he is bound to pay or not. If it is a custom in the locality to charge a higher fare for a woman than for a man then A must pay the difference, if the horse was hired to ride a woman then it is permitted to ride a man (B. M. 79).

2. If the animal is hired to ride a woman it is permitted to ride any kind of a woman, even though she is pregnant or with a suckling child (L. C.).

3. When A hires an animal to carry 200 lbs. of wheat and he carried with her 200 lbs. of barley or straw and the animal died, A is bound to pay for the animal because he caused the death account of the size of the load. If however she was hired to carry a load of barley and he carried with her a load of wheat, he is not liable for it (L. C. 80).



4. If A hired an animal to carry a load of 210 lbs. and he added a thirtieth more of this amount, as a result of which the animal died, *e. g.*, he added 7 lbs. he is liable to pay for the animal, if it is less than 7 lbs. he is free, but he must pay for the added quantity (L. C.).

5. If he hired the animal without specifying the weight of the load, it must be governed by the rules of the locality. If he added  $1/30$  more than the established rule, and the animal died or was damaged he is bound to pay for it (Tur).

6. A hired a bundle carrier to carry a certain load and A added one gallon more and the bundle carrier was injured, A is bound to pay for his injury, even though the bundle carrier is a sensible man he thought that he would be able to carry such load (L. C.).

## CHAPTER 309.

1. A hired an ass to lead her up a mountain and he lead her in a valley and she slipped as a result of which she was damaged, even if he violated the consent of the owner, he is not liable because if she slipped in the valley if he directed her up a mountain she would have been more liable to slip. If she became damaged on account of overheat he is liable, because if he had lead her up a mountain she would not have become overheated (B. M. 78).

2. If she was hired for the purpose of leading her in a valley and he lead her up a hill and she slipped he is liable. If she became damaged on account of overheating, he is not liable. If the overheating resulted from the climbing of the hill, *e. g.*, she became overheated just at the time she reached the top he is liable (L. C.).

3. A hired an animal from B to go with her in a certain place, and to return her the next day and he drove her back and forth in the same day and she became ill, B then claimed before the aldermen for the driving of the animal back and forth on the same day, and they decided that A shall retake and cure her, and A did so; and after eight days she died A is bound to pay for her on account of his negligence (Tur).

4. If A hired an ass to go in a certain place and during the trip he became lame, and A paid no attention and continued with him the trip, as a result of which his condition was aggravated, A is bound to pay because it was his duty to stop going and leave the animal in a safe place. If however A was in a hurry to reach his destination, and it was impossible to hire another ass, he is free, because it is not considered as negligence.

5. If A hired a cow to plough a field which was on a hill and later ploughed in a valley and the plough share was broken, A is free. If he hired her to

plough in a valley and he ploughed with her on a hill and the plough share was broken, he is liable (B. M. 80).

6. If A hired a cow to thresh beans and he threshed wheat and she slipped then he is free, because when she slipped in the wheat, she would have slipped among the beans. If however, she was hired to thresh wheat and she threshed beans, he is liable (L. C.).

### CHAPTER 310.

1. A hired an ass from B for a journey to a certain place and she became sick or nervous and she fit to work or she was taken for government purposes at the time she was going to work even she will not be returned, A must pay for the entire labor (B. M. 78).

2. If however she is not fit to work, B must produce him another ass to complete the work, and if he does not produce the other ass, A must pay for the way he used the ass, and not more (L. C.).

3. When the ass died either she was hired for load or for ride. If at the time of hiring it was said I hire you an ass without mentioning this ass, he must produce him another ass and if he does not produce, he is permitted to sell the body of the dead ass and to buy or hire another ass for the money until he arrived to the certain place which was agreed upon (L. C.).

4. If at the time of hiring the ass was specified this ass, and she was hired for riding or to carry glass and she died in the middle of the way if the money from the ass's dead body can be sufficient to buy or to hire another ass, till he arrived to the certain place he can sell it, and if it is not sufficient for either purpose, A must pay for the half way and he may has a claim of honor of B (L. C.).

5. If however she was hired to carry an ordinary load and was not mentioning this ass, he is not bound to produce another ass, but A must pay for the half way and B must take the dead animal.

6. It is an opinion that even if the ass was hired to carry an ordinary load the rule as it was hired for ride prevail; and when A is unable to sell his goods in the middle of the way or he cannot hire another ass to reach the certain place he does not have to pay for the half way (Ramo).

7. R hired for two days an animal from B to ride back and forth and as he was returning the tide rose and he was delayed one day more; if the animal was hired by the day he must pay for the extra day, if it was hired for the trip to the certain place, and the nature of the tide was such as not to rise then R must pay only for the two days. If it is the nature of the tide to rise and R knew and B did not know the nature of the tide, then R must pay for the extra day. If they both knew the nature of the tide, then



R does not need to pay for the extra day. The support of the animal for the extra day the same rule applies as the labor (B. M. 77).

### CHAPTER 311.

#### IF ONE HIRED A SHIP AND IN THE MIDDLE HE UNLOAD HER OR SHE SUNK.

1. If A hired a ship for a certain weight of the load and he added  $\frac{1}{30}$  of the load extra and she sunk, A is bound to pay the value of the ship (B. M. 86).

2. A hires a ship from B and she sinks in the middle way. If B says the ship I hire to you and A hires for the purpose of carrying any wine even though A does pay the labor for the ship, B must return it because A can say produce to me the same ship and I will bring other wine and I will export with her and if it is possible to take the ship from the water and sell her to hire another ship for the same money A has the right to do so (B. M. 79).

3. If however A hires a ship without specifying this one but B specifies to carry this wine even A does not pay in advance for the labor of the ship he must pay for all way, because B can say bring me the same wine and I will bring another ship and I will export the wine.

4. It is an opinion that A must pay only for the half way (Ramo).

5. If B specified the ship and A specified the wine, if the rent was already received it cannot be recovered from B. If it is not received A need not to give because they both cannot fulfill their promises (L. C.).

6. If B did not specify this ship and A did not specify this wine when they both wish not to fulfill the agreement, they both must share the rent equally, if however A wishes to bring wine for the export and B refuses to bring a ship even though A pays the rent B must return it (L. C.).

7. When A hires a ship for a certain distance to carry a load of merchandise and in the middle of the way he sold the merchandise, A must pay the rent for all the way, but if he found some one who wishes to use the ship for the other half way he can hire her, but he must pay for the damage which is made in the ship, by the unloading of the first goods and the reloading of the other (L. C.).

8. When A sold the merchandise to another and the same buyer wishes to transfer the same to the same distance the owner of the ship may receive for half way rent for the ship from A and the balance from the new buyer, but the owner of the ship has a blame of honor against A because he made him to be

acquainted with a man which was not acquainted with him until now (L. C.).

## CHAPTER 312.

1. When A hired a house or a yard or store to B for a certain length of time A cannot dispossess B before the time has expired even if the house of A has fallen and he has no other rooms to move in, or he becomes forced to sell the same premises, the buyer cannot dispossess the tenant before his lease has expired (B. M. 101).

2. If A received rent in advance even if there was no time set B cannot be dispossessed so long the rent is paid (Ramo).

3. When a house was a pledge for a certain sum for each year so long he did not redeem it and A sold the premises to B he cannot dispossess the lender in the middle of the year, but after the year B may recover the house (B. M. 73).

4. A rents premises to B without specifying the length of time in the summer season B must receive 30 days notice before he can dispossess B because he shall be able to look for rooms, but in the winter time B cannot be dispossessed until after Passover (L. C. 101).

5. If the time of the notification is less than 30 days before the tent holiday, *e. g.*, he was notified the

16th of Ellul he cannot be dispossessed until the month of Passover (April) is past and he shall be notified 30 days afterwards (L. C.).

6. This law holds good in a small city but in a large city, either in the summer or winter seasons, the tenant must be notified 12 months before he can be dispossessed (L. C.).

7. A store either in a small or large city, 12 months notice must be given (L. C.).

8. The rule is reciprocal as to tenant and landlord, *e. g.*, when the tenant decides to move he must give the landlord 30 days notice in a small city and 12 months in a large city so as to have time to look for a new tenant and that his house may not be vacant. If the tenant did not give the notice he cannot move but he must pay the rent of the whole season (L. C.).

9. The tenant in the above case has the right to put another in his rooms providing the other family is with the same limit and honesty as his family (Ramo).

10. If the premises were rented for a certain length of time, when the time has elapsed, he can be dispossessed without any notice, even though the term expired is in the middle of the winter season (Rambam).

11. These above rules apply only to dispossess but as to the rent price, it must be apportioned ac-



according to market quotations. If the market figures of rent have increased then the landlord can say to the tenant "either pay me the market price or move." When the price has decreased and the tenant did not give notice to the landlord that he will move he can say, "Give me the rooms at the standing price or here is your house." This notification must be made before the time has expired. If the time has arrived and he did not notify, he must pay the previous price (L. C.).

13. This rule applies only when the premises were hired without limit, if however it was hired for a certain length of time, even if the rent price has increased or decreased, the rent cannot be fixed (L. C.).

14. If the premises of the landlord which he occupied have collapsed and he has no other place to move, and the tenant in one of his houses is a tenant at will, after the possession of the tenant for 30 days he can be dispossessed because the landlord can say it is unjust that I shall run the streets and you dwell in my house, but if the tenant has a lease he cannot be dispossessed even in such case (L. C. 101).

15. If the landlord sold the house to another the other cannot dispossess the tenant without 30 days notice the same as the vendor (L. C.).

16. Where it is accustomed to rent a house by the year, if the tenant was in possession one day in the next year without notices to each other B must

pay the entire rent for the next year and have no right to move (Tur).

17. One rented a house for a year for a certain sum and the year was a leap, the extra month belongs to the tenant, if the house was rented by the month then the extra month belongs to the landlord, if it was stated twelve diner a year, or one diner a month either one diner a month and twelve diner a year, the extra month belongs to the landlord (B. M. 102).

18. If the landlord claims that he rented the house for certain time and the tenant claimed that he is a tenant at will and being the winter season you cannot dispossess me until after Passover (April), the burden of proof is upon the tenant, if the tenant cannot prove then the landlord must take an oath (Hises) and the tenant can be dispossessed (Rambam).

19. A rented a house to B for a certain length of time and A decided in the meantime to rebuild the house, the tenant has the right to prevent it, if the landlord violated and he took apart the house he is bound to give or hire for him another house (L. C.).

20. If the house collapsed or burned—if at the time when the transaction was made—A said, this house I hire to you, A is not bound to give to B a

different premises and A must figure for the past time the rent, and return the balance (L. C.).

21. If however, at the time of the transaction A said, I hire to you a house like this, he is bound to produce a house similar width and length as the first, if the previous house was small one he is forbidden to make a large one and vice versa, also if there was one room, he is forbidden to make two and the windows and the doors must be similar, any exchange must have the consent of both (B. M. 102).

22. It is an opinion when the house is only condemned A is bound to repair the house when the rent was received in advance (Tur).

23. If however at the time of the transaction was made A said I hire to you a house he is bound to rebuild the same or to give him another house, even if she is not the same size as before.

24. If A rented an attic to B and the attic collapsed he is bound to provide another attic for B. If A said at the time of the hiring the attic which belongs to this house I hire to you and the attic was damaged by a hole of sixteen finger (four Tefochim), A is bound to repair it. If he does not repair it B may move to the down floor and live there until A will repair the attic. If however the house collapses, he is not bound to give him a different attic (B. M. 116).

25. If the attic collapsed entirely but the house still subsisting he must build another attic (L. C.).

### CHAPTER 313.

1. A rented an apartment to B, B has the right to use the beams and the porch which is in the front or back and anything which it is a custom of the locality to use (B. B. 6)

2. A rents his yard to B without specifying about the buildings which is made for the convenience of the yard, the stable is not included in the transaction (B. M. 102).

3. The manure which the cattle have left upon the ground, it belongs to B. If however cattle from the street came on the premises and left manure there, it belongs to A because his yard is confirmed to him any bargain, even without his consent and even it is rented to another (L. C.).

4. However if B puts a vessel and collects the manure before it fell upon the ground, it belongs to him (L. C.).

5. A rented a bakery to B the ashes which have collected from the stove belongs to B even if other people bake in the same stove (B. M. 101).

### CHAPTER 314.

1. A rented a house to B, A is bound to put the doors, windows, ceiling locks, and anything which



must be repaired by a skilled worker. Even if B moved in before this improvement was made, it must be done afterwards.

2. B is bound to make a fence on the roof and must fix a salutation (Muzzuzah) to his door, and if he wishes to cement his roof or to build a step-ladder and anything which does not pertain to a skilled worker, B must do this at his own expense (B. M. 101).

## CHAPTER 315.

1. The rent or real property must be confirmed with the same settlement as buying real property (see Chapter 197).

2. Any condition which can be made by a sale of real property can be made as to rent (B. M. 56).

3. A rented a house to B and B claimed that he rented it on condition he shall be permitted to keep other lodgers there, and A denied it A may take an oath that he did not permit it, and he is free (Tur).

4. A hired a boy for an employee from B, and B was surety for all the damages which the boy will cause so long as the boy will remain in his premises even if there was no form of agreement (Kinion) he is bound to pay because a rent condition is a (Kinion) not necessary (Tur).

## CHAPTER 316.

1. A rented a house to B for a certain length of time and B wished to transfer his lease to C for the same length of time A is permitted when the limit of the other's family is the same, but A has the right to say I will save you the trouble to rent my house, if you do not wish to stay. Move and I will release you from the lease (B. M. 79).

2. If B wished to move from the house and pay rent for the whole period, and leave the house vacant, A is permitted to rent the house and he need not return the rent to B, if he has already received it. If he did not receive it, he must deduct from B's account the amount received from the other person, because when a house is vacant it becomes spoiled (Ramo).

3. If A and B rented a house in partnership it is forbidden for one of the partners to transfer his share to another even if the limit of the family is less than his because the one partner may say I have confidence in you and not to the other and cannot force the other to divide the house because the house did not belong to either, but it is only rented (Tur).

## CHAPTER 317.

1. A the tenant, claims that he paid the rent for the premises and B the owner, claims that he did not receive it (in such a place where it is a custom to pay

by the end of the month). Either the hiring was in the presence of witnesses or with an agreement. Before the time has expired A must prove with evidence after the time has expired or even on the last day of the thirty days A is believed and B must prove with evidence that he did not receive the rent and if he cannot prove then A may take an oath that he gave the rent and he is free and the same rule applies if it was hired by the year (B. M. 102).

2. A rented a house with an agreement to B for a certain length of ten years and in the agreement was not mentioned the date of the transaction and B claimed that he use it one year and A pleaded that the lease of ten years has expired the burden of proof lies on B, if he failed to prove it then A can take an oath (Hises) and can dispossess B from his house (L. C.).

3. If in a pledge or in a rent agreement it is written that he hired the premises for years and it was not specified the number of years and the owner claimed that it was hired for two years and the tenant claimed it was hired for three years and the tenant seized the field and ate her fruit it is considered as possession until the owner of the field must produce evidence to win the amount of the rent for the third year. Another opinion stated if the court sees that the tenant is unable to prove with evidence his inno-

cence, the case must be decided in the favor of the owner (L. C. 110).

4. If the lessee eats the fruit of the field three years and he hide the rent agreement and he claimed that he leased the field for five years and the lessor claimed that he hired it only for three years and he said show me your agreement and the lessee claimed that he lost the same then the lessee is believed on account of migy because he can say that he bought the field when there are no witnesses that he started to eat the fruit on account of hiring. But when it is witnesses he is not believed (L. C.).

### CHAPTER 318.

A hired a mill from B and promised to grind for him every month twenty bushels of wheat in payment for the rent, and later B becomes rich and he needs no more to the grinded wheat. If A has sufficient work he must pay to B cash for the rent, if he has not sufficient work he cannot be forced to pay cash for the rent (Kesuboth 103).

### CHAPTER 319.

1. If A deceived B and received permission from him that he shall keep fruit as storage in his house or he put the same in his premises without his consent and A went away, B has the right to sell a part



of the fruit and hire laborers to remove the same from his premises and even to throw the same on the street, it is more preferable that he shall notify the court and they shall hire a place for the fruit, although A was doing an injustice.

2. Another opinion holds that A must be notified and if afterwards an accident happens to them B is not liable (B. M. 101).

## CHAPTER 320.

### הלכות חכירות וקבלנות

#### LAW OF LETTING LAND TO FARM.

This sort of a lease is divided in three classes.

1. Hiring a field for a certain time to sow, and it is agreed to pay a certain amount cash for rent.

2. Where it is agreed to pay for the rent a certain amount bushels of fruit each year and this is called in the Talmud Checker.

3. Where the lessee has agreed to give the lessor a certain per cent of the produce of the field leased by him the Talmud calls it (Kablom) and he is considered as a partner (B. M. 103).

4. Every expenditure which is a necessity for the ground it belongs to the lessor and every expenditure which is only for a better guarding of the field must be spent by the lessee, *e. g.*, the plough and the vessel which they carry dust and the pail in which they

draw water all this must be spent by the lessor. The digging of the place in which the water shall be collected must be spent by the lessee (L. C.).

It is an opinion in case of a checker he is bound to spend for all the above expenses (Ramo).

Every one of the lessees if it is a custom in the locality to cut the harvet he is forbidden to rip, if it is the style to rip he is forbidden to cut and if it is custom to plough after the cutting he is bound to plough (L. C.).

### CHAPTER 321.

1. A leases from B a field which depends upon irrigation or which contained a group of trees and thereafter the spring for irrigation ceases to run but the big river is in existence and it is possible to draw water from the river with a pail, or the group of trees is destroyed, the lessee cannot deduct from the amount of the rent, if however there is a general plague in the country, *e. g.*, the big river ceases to run the lessee can deduct from the rent on account of his damages (B. M. 103).

2. When it was agreed by the lessee to pay a certain per cent of the produce it cannot be deducted, even in such case but the lessor must receive according to the percentum (Ramo).

3. If at the time of the transaction the two parties were standing in the field and the lessor has expressly

stated this field which is watered by a spring, I hire to you, and the spring ceased to run or the tree was cut down the lessee can deduct his damages from the rent, if the both parties were not standing in the field at the time the transaction was made even if they say this field I hire to you he cannot deduct from the rent (L. C. 104).

4. It is an opinion if the lessee said to the lessor I hire from you a watered field, even if the transaction was made when they were not standing in the same field, he can deduct from the rent (Ramo).

## CHAPTER 322.

1. A leases a field from B and thereafter the fruit is eaten by locusts or is blasted by a storm, if this accident happened to the majority of the fields in the city the lessee can deduct from the rent the amount of the damage, if it has not so happened to the majority of the fields in the city, even if it so happened to all the fields of the lessor he cannot deduct from the rent, if however such a catastrophe happened to all the fields of the lessee even if it so happened to the majority of the fields of the city, he cannot deduct from the rent, because the lessor may claim that the occurrence was due to the hard luck of the lessee (B. M. 105).

2. If the lessor made a condition with the lessee that he shall sow wheat and he sowed barley or he

did not sow anything or he sowed and it did not grow even if the plague of the locusts spread to the majority of the fields in the city, he cannot deduct from the rent (L. C.).

3. If the lessor sowed the field and it did not grow he must sow again as long it is accustomed to sow in the same place (L. C.).

### CHAPTER 323.

1. A leases a field from B for a ten ton weight for each year and the wheat of the field was growing poorly the lessor must receive from the same wheat for the rent and cannot force the lessee that he shall buy good wheat from another field and give to him for the rent (B. M. 106).

2. If the wheat of the field was good, the lease must give from the same and he cannot say I will buy for you other wheat from the market, but he must give from the same field (L. C.).

3. A leases a wine grove from B for ten baskets of grapes and they become wormed after they are taken from the tree and this same rule applies when the sheaves become spoiled after they have been cut. A may give the same in payment of the rent (L. C.)

4. When however the wine grove was leased for the price of ten barrels wine and they became sour the lessee must give good wine for the rent except



when it was specified from this wine garden, then the lessor must receive the same (L. C.).

### CHAPTER 324.

1. A leases a field from B to sow barley then he is forbidden to sow wheat because the wheat make the field more leany than the barley, if it is leased to sow wheat it is permitted to sow barley (B. M. 106).

2. If the field was leased to pay the lessor a certain per cent if it is permitted to exchange for such kind fruit which makes the ground more leany. But it is more profit. There are two opinions (Ramo).

### CHAPTER 325.

1. A leases a field from B for a few years less than seven, he is forbidden to sow flax because it makes leany the ground and she cannot become fat again until the time of seven years and the lessee must surrender the field to the lessor with a good condition and he has no part in the timber of the sycamore tree, and he is not entitled in the advance which are made by the tree which grow from itself, but he must receive pay for the place which the tree occupies, if however it was leased for a time of seven years he may sow flax and cut timber from the sycamore trees in the first year only (B. M. 109).

## CHAPTER 326.

A leases a field from B to sow papasit and sows wheat and the wheat was so good growing that the profit was as the papasit the lessor cannot claim of the lessee only of a claim of honor. When the profit was less than the papasit, the lessee must pay the lessor for his share as much as he will be benefitted from the papasits (B. M. 104).

If the profit of the wheat was more than the profit of the papasit they both must share in it as it was stipulated at the time of the agreement, although the wheat make the field not so lean as the papasits he cannot deduct from the rent (L. C.).

## CHAPTER 327.

1. A lease which give to the owner a part of the profit and his time has expired and he wishes to resign from the business and there was fruit which cannot yet be sold or the market was not open, it must be estimated and the lessor must pay for it to the lessee (B. M. 109).

2. The fruit and the straw and the wine, and the vine each one of them must be divided but the props which prop the vine, belongs to who bought them, and if they were bought in partnership they must be divided among them (L. C. 103).

## CHAPTER 328.

1. A leases a field from B and it is not productive, if there is enough profit to cover the expenses and twelve gallons fruit are left as profit then A is bound to work on it.

2. If A leaves the field fallow, it must be estimated how much she can produce and he must pay to B for his share (B. M. 105).

## CHAPTER 329.

1. A receive a field from B for cultivation for a certain time and he died and left a son, B cannot claim from the son for the fruit which the father ate, and the son cannot claim from the lessor for the work which the father done, but it must be appraised how much the father's work was worth until the date of his death, and the son may receive it, and even if the lease was set up for a certain length of time the same must be dissolved (B. M. 109).

## CHAPTER 330.

1. A was hired to plant 100 trees on the field of B, even if there was found ten bushes B cannot claim for it, if it is more than ten A must pay for all the spoiled trees (B. B. 95).

2. In a locality where it is a custom that the planter shall receive a half of the profit of the ad-

vances, and the owner of the ground a half, and A planted in one place where it was profitable and in another place in which he planted was a loss. The profit must be estimated and from A's half must be deducted the amount of the loss and the rest he shall receive, and even if A made a condition that in case he loses, he shall not take anything, he is entitled to the rest of the profit because it is a promise and it cannot be effective and he must receive the rest of the profit. (See Chap. 60, Code 1.)

3. When A planted and advances the field and he wishes to resign from the position, and B must hire another cultivator C, and to pay him one-third, which it is a custom in the city to pay so much to a land cultivator. Then B must receive a half of the profit so that he shall not lose and C one-third, the rest, one-sixth, belongs to the planter (B. M. 109).

4. Every planter who is entitled to a half in the fruit is entitled to receive a half of the vine which becomes naturally old, if they however become spoiled by flood or by wind storm he is entitled to one-quarter (B. B. 95).

5. If the land cultivator claims that he agreed with the owner for a half, and the owner of the field says that he promised only a third, it must be decided by the custom of the locality (B. M. 110).



## CHAPTER 331.

הלכות שכירות פועלים

## LAW OF HIRING LABORERS.

1. The time of work is from sunrise to sunset and the time of going to work is included in the time of the employer; the time of going from work is included in his own time (Smah).

2. When A hires laborers and afterward he said to them that they shall come to work only in the morning and shall work late in the evening even though they have received a raise of the wages they are not supposed to do so because it was not specified at the time of the hiring (B. M. 83).

3. If it is a custom in the locality to give refreshments or support to the laborers it must be given (L. C.).

4. One hires a laborer and agrees with him that he shall receive the wages as one or two of the laborers of the city. It must be estimated the smallest wages and the largest wages and he is entitled to one-half of the two, *e. g.*, one receives four zus and one six zus he is entitled to five (B. M. 87).

## CHAPTER 332.

1. A instructed his agent to hire laborers for the price of three zus a day, and the latter promises them

four zus, if he says to them at the time of the agreement that he will pay them the wages, the agent must pay them four, and he can receive from A only three and one zus he must lose from his own purse. If he said that their wages will be paid from the treasury of A, it must be given to them according to the rate of labor in that locality. If there is two rates of wages, some receiving four zus a day and some receiving three, they can only receive three zus and they can have a blame of honor against the agent (B. M. 76).

2. If however the work is better done they must be paid four zus because they do better work (L. C.).

3. If A instructed the agent to hire laborers for four zus and he hired them for three, they can not receive more than three, because they were satisfied (L. C.).

4. If A instructed the agent to hire laborers for three zus a day, and the agent hired them for four zus and they reply that they depend on the instruction of A, the work must be estimated if it is worth four zus, A must pay four zus from his treasury, if it is not worth or it is uncertain, they must receive three zus (L. C.).

5. When A instructed the agent to hire the laborers for four zus a day and the agent promised them three zus and they reply that they depend on the instructions of A, even if the work is worth four, they are not entitled to more than three, because

they were hired for three, and they were satisfied (L. C.).

6. When A said to the employee that he shall work for him for four zus a day for the same wages as was received by your comrades. And afterward it is found out that his comrades receive more than four, A must give him the same wages as the comrades (Ramo).

7. When A hires a laborer and promises to give him an article in payment of his wages. A is permitted to give cash for the wages because no settlement (Kinion) was made in the article (L. C.).

8. When A hires a laborer for one sala and the rates of the wages becomes decreased and A shows him a sour face, and the laborer apologized him, and finish the work. A cannot deduct from the wages, but he must pay him the amount agreed upon, because he may claim that he did better work for him (L. C. 77).

9. The same rule applies if the rate of the wages increases, and the laborer shows to A a sour face and A apologizes him and he finish the work, he cannot claim afterward a raise of the wages because A can claim that his apology was only to treat them with better board and he did so (L. C.).

10. If the work was worth five zus and the laborers were hired for four zus, and the rate of the

wages was decreased and it was not worth more than four zus, they must receive four zus (L. C.).

11. The same rule applies when the laborer was hired for one zus more than the rate, and the rate of wages increased in one zus they cannot claim one zus according the present rate. But he must receive the past price (L. C.).

### CHAPTER 333.

1. When A hires B as a laborer and B withdraws and says to A he shall hire others for laborers, or A withdraws and says to B he shall look for another job, they cannot claim against each other only a blame of honor (B. M. 75).

2. If B can prove that he lost another job on account of it, or he can get a job with a smaller wage, then A is bound to either to pay for the day or to add the lost amount of the wage (L. C.).

3. It is an opinion if A made a settlement (Kinion) in the tools which belong to B, and B is a job worker, A and B cannot withdraw from the agreement when B works by the job, but when he works by the day he can withdraw (Ramo).

4. A hires an expressman to bring fruit for him and they did not find fruit in the market or A hires B to water the field and when B comes to the work he finds the field has been watered by the rain, if A



visited the field and he saw that it needed to be watered then B cannot have any claim against A, if A did not visit the field a night before he must pay to B the wages, but he may deduct a small amount because no work was done. Or not having carried a load (L. C.).

5. B started to work and during the day he resigns A cannot claim against B, even B receive the whole wages for the day, in advance and he is unable to repay the same, he is permitted to withdraw and the rest of the money shall be remain as a debt, and he will pay when he will be able. Because it is written, "for unto me are the children of Israel servants; and it is forbidden for them to bargain themselves to another" (Leviticus 25:55) (B. M., 77).

6. The rule of the day laborer who withdraws is so the amount of work which he has done must be estimated and he can receive the same (L. C.).

7. When the laborer is hired by the job, and when a half of the job is done and he resigns, the half which is to be finished is to be estimated how much it will cost, *e. g.*, if the price was agreed for the job for eight zus and the laborer made a half job and to finish the other half will cost six zus, the laborer must receive only two zus. If to finish will cost two zus he can receive only four zus because he done only a half (L. C.).

8. If the withdrawal is by the owner the same rule as the job labor prevails (Tur).

9. When the work is such which becomes spoiled on account of the ceasing of the work, *e. g.*, A hires a laborer to take out the flax that is disintegrating, or he hires an expressman to bring trumpets for a bride wedding or for a funeral, either he was hired by the day or by the job, no one of them can withdraw, except when an accident happens, *e. g.*, he becomes sick or if some of his relative dies, if no accident happens and the workman withdraws, and the owner was able to hire other, at the time he hires them and now he is unable to hire another he has the right to hire another laborer to finish the work and to pay to them as much they charge, even to the amount of forty to fifty zus a day and charge the difference to the first laborer. Or he has the right to deceive them and promise higher wages and afterward he shall give them the same wages (L. C.).

10. When a workman or a teacher becomes sick their wages can be deducted for the time they are sick. If however when the wages has been received in advance it is an opinion that the workman or the teacher is not bound to return the wages for the time he was sick (Ramo).

11. When it is possible to hire laborers for the same wages to finish the work and the laborers say to the owner that he should hire them to finish his

work either a day laborer or a job laborer can receive the wages and the day laborer may receive for his work and the job laborer must be estimated the cost to finish and may receive the rest (B. M. 106).

13. A commands to B to make for him an article and he will purchase the same from him and B done the same and afterward A refuses to buy the article and the latter may become deteriorate, A is bound to pay for it (Tur).

### CHAPTER 334

1. A hired B to water field from this river and the river dried up during the day, if it is not the nature of the river to dry up or even if it is the nature of the river to dry up, but B knows the defect of river even A knows this also, and because B did not stipulate before, he is only entitled to a half day wages. If A knows the nature of the river and B did not know it, he can receive the wages, deducting a small amount for the vacancy (B. M. 77).

2. A hires a house for a residence for a certain length of time and in the meantime A dies, the lease become void and the heirs must pay only for the time they used it.

3. It is an opinion that the lease is valid and therefore if the rent is paid in advance it is not necessary to return it, but if it is not given it can not be claimed from the heirs (Ramo).

4. When A hires a house for a residence and the whole city was destroyed on account of war or fire or flood, A does not have to pay for the occupation of the house (Ramo).

5. A hires a house for a residence and moves in, and after living there he finds out that the air is contaminated the lease can be broken, the same rule applies when A sends his son to a school and it is found that the air does not agree with the health of the child, the teacher is only entitled to the wages for the time covered.

6. A hires B to water his field and there was a rain in the night and the field need not to be watered, A is free from the wages. And the same rule is when B watered a half a day and it rained during the other half a day, A must pay only for a half a day. If however the field becomes watered by the river A must pay to B the whole wages because B gains by the chance of the heaven (B. M. 77).

7. The above rule applies only by a laborer, if however A hires B for a land cultivator and agrees with him if he water the field four times a day he shall receive half of the fruit, and the other cultivators who watered the field twice a day, they only receive a quarter of the fruit. When a rain comes and water the field and it is not necessary to water it, B is entitled to a half of the fruit, because B is con-



sidered as partner and he is entitled to all the acts of God (Gitin 74).

8. A hires B to dig a field and in the middle of the night there is a rain and it is impossible to dig, if B has not seen the field A must pay the wages because he has to notify B he shall not come to work, if B saw the field before he cannot blame A (Ramo).

9. It is an opinion if at the time of the hiring was not mentioned a certain work B can demand that A shall give him other work (Ramo).

10. When A hires a teacher for his son for a certain time and the son becomes sick or died, if the son is used to the sickness or even if he is not used to the sickness, and the teacher is from the same city and he knows the boy's nature, the teacher must be paid for the time consumed. If the sickness is chronic and the teacher does not know the nature of the child, he is entitled to get paid for the whole amount promised (Tur).

11. If it is permitted for A to send another boy with the same ability to take the place of the sick or the dead boy, there is two opinions (Ramo, Chap. 325).

## CHAPTER 335.

1. A hires B a day laborer for a certain kind of work and the same was completed in the middle of the day. When A is able to get him a lighter kind of

work or one equal to this B must do it, if not, B must receive his wages, minus a small amount. It is permitted for A to receive work for B from some one else, of the same kind, to finish the day, or to give him harder work and to pay him high wages. If however B was such kind of a laborer, *e. g.*, a ground digger or a field laborer to which they are accustomed to work steadily, and if they cease to work they become sick, B is entitled to receive the all amount of his wages.

2. When B sees the job at the time of the agreement and he understands that there is not sufficient work for one day, he is not entitled to anything for the half day he is idle, because B must condition it at the time of the agreement (Tur).

3. A hires a horse for eight days journey and when he rides two days on the road he changes his mind and decides to return to the city, he is permitted to work with the horse the remaining days or to hire it out for other purposes, *e. g.*, to carry wood, and even if the work is harder than journeying, because the horse is safer in the city than on the journey (Ramo).

4. A hires an expressman to bring merchandise for him and the expressman goes and does not find anything to bring, the expressman is entitled to receive his wages, if he was hired to bring a heavy load, his wages must be deducted accordingly (Rambam).

5. A sends B to bring applies for a sick person and he was promised high wages when he brought the same he found that the sick person recovered or died, and he need not the apples, B must get paid for his errand and A cannot force B to receive the apples in payment of his labor (B. K. 116).

### CHAPTER 336.

1. A hires B to work in his field for four zus a day and he then gives him work in the field of C without the latter's consent and then C claims that the work is only worth one zus, A must pay B four zus, and he can only receive from C one zus, and A cannot require B to receive the fruit which his work produced in payment of his wages even if A did not say that his wages would be paid from his own treasury, only he was hired without it being specified. If however A hires B to work in the field of C, A can say to B that he should take from the fruit his wages, if however A says your wages will be paid from my treasury, he cannot say to him to take the fruit in payment of your wages (B. M. 76).

2. A hire B to work in his field or to collect abandoned articles, A cannot force B to receive the articles which he collected in payment of his wages if however B was satisfied to take this in payment, and B makes in the articles a settlement (Kinion)

and afterwards A wishes to withdraw and to pay cash for the labor, B has the right to take the articles in payment of his wages (L. C. 118).

3. A hires B to guard abandoned articles, A can say to B receive the articles in payment of your labor, because A did not make any settlement in them (L. C.).

4. A hired B to work for a certain time, and in the meantime B was drafted into the army, B is entitled to receive pay only for the time that he worked (Tur).

## CHAPTER 337.

I. When thou comest into thy neighbor's grape yard, thou mayest eat grapes at thy own pleasure till thou hast enough, but into thy vessel thou shall not put any. When thou comest into the standing of thy neighbor thou mayest pluck ears with hand, but a sickle shalt thou not move over they neighbor's standing corn (Deuteronomy, Chaps. 23, 25, 26).

1. Laws concerning the permission of a laborer to eat the fruit in which he works during the time of labor based upon the following paragraphs.

2. A laborer who works with any part of his body in producing food is permitted to eat from it and it is forbidden to stop him to eat (B. M. 87).

What he is permitted to eat! He is permitted to eat the fruit grown in the field. The laborer is per-



mitted to eat of the products that grow from the earth and what is cleaved to the earth, and the work is finished, *e. g.*, when he picks the grapes and the olives or the figs or the dates or when the product is cut from the field before the work is completed, which brings in the liability of the tithe, if however he works in products where it is not grow from the earth, *e. g.*, he manufactures cheese or in a creamery, he is forbidden to eat from it. The same rule applies when a laborer digs in a vineyard or he covers the roots of the trees or gathers olives or figs or dates, he is forbidden to eat from it because the work is done so that the large fruit may be convenienced.

3. When a laborer works in picked fruit when the work is finished, and this becomes the liability of the tithe, *e. g.*, he parts the dates or figs he is forbidden to eat of it because when it is no other liability except the liability of the tithe he is forbidden to eat, but when there is another liability after that, *e. g.*, wheat which is for the purpose of bread which there is afterward the liability of the (aside cake), the laborer is permitted to eat until the same liability of the (aside cake) will be settled, but afterward he is forbidden to eat from it.

4. When a laborer is hired to pick apart bunches of grapes which have not become ripe and he put them in a basket until they become heated and soft he is permitted to eat of them (L. C.).

5. When the laborer is hired to watch fruit which it is cleaved unto the earth even at the time when the work is finished, he is forbidden to eat; however a laborer who is hired to watch picked fruit, before it is finished, even if he is forbidden to eat on account of the law of the Torah, he is permitted to eat because it is the law of the locality (L. C. 93).

6. The laborer is permitted to eat fruit more than the value of his wages, *e. g.*, he is hired for one diner a day and the fruit which he eats is worth one sala. But he must be taught not to do so as no one will employ him again (L. C.).

7. When the laborer watches four or five storages of fruit belonging to different persons he is forbidden to eat from one more than the others, but he must eat an equal portion from each (L. C.).

8. When the laborer work in dates he is forbidden to eat grapes even if they belong to the same employer, and even if he was hired to work in both, but he may avoid eating until he arrive to work in the grapes or to the place where the fruit is better and eat from them.

9. It is forbidden for the laborer to eat grapes with bread or to dip it in salt so that he shall eat more; if however it was specified at the time of hiring that he shall be allowed to eat a certain amount of fruit then he is permitted to eat with or without bread or to dip in salt (B. M. 89).

10. It is forbidden for the laborer to suck the grapes or to roast the ears on the fire or to smite them on a stone so that they shall become more tasty for eat even though he does not waste the time (L. C.).

11. It is forbidden to overeat himself with the fruit. It is permitted for a laborer to dip his bread in vinegar so that he shall eat much grapes and it is permitted for the employer to give a drink wine to the laborer so that he shall not eat much grapes (L. C.).

12. If the laborer orders "Give my portion or a part of it which I am allowed to eat to my wife and children," or even if he belongs to an organization which take a vow, so that they shall not eat grapes and drink wine (Nozerim, see number Chap. VI) and he orders that his portion shall be given to his wife and children, it is ineffective (B. M. 92).

13. If a laborer works with his wife and children in one vineyard and he made a condition with the employer that the children shall not eat the fruit, if they are of full age and this is consent by them then it is effective, and if they are minors, then it is ineffective and they may eat (L. C.).

14. It is forbidden for a laborer to work at night and hire himself for labor for the day or to fast or to save from his food and give to his wife and children because the work cannot be done well when he is weak (Tur).

15. The laborer is commanded that he shall not waste the time which belongs to the employer; but he must work with all his health, for as it is written that Jacob served with all his power his owner and father-in-law, and therefore he will become blessed even on this world with wealth (Genesis, Chap 21; Tur).

### CHAPTER 338.

“Thou shall not muzzle thy ox when he threshes” (Deutr. 25-4).

This law is based on the following chapter.

1. When an animal is hired to work among fruit which grows from the earth either when it is cleaved or cut from the earth, it is permitted to eat and the same rule applies when it carries a load on her trunk she is permitted to eat until she is unloaded. But the owner is forbidden to hand it to her with the hand (B. M. 88).

2. Every one who prevents the animal from eating when it is working must be punished by flagellation. This law includes either an ox or any other animal, either clean or unclean, and by every kind of work at the produce of the earth (B. K. 54).

3. If one muzzles an animal at the time of working or even if he muzzles her before she starts to work and works with her, and even if he yells on her not to eat then he must be punished by flagellation (B. M. 90).



4. A hires an animal from B and muzzles her and threshed with her, then he is liable to flagellation and he must pay to B four gallons fruit of the same kind for each day when it is a cow, and three gallons when it is an ass. Because the liability for support comes at the time of the settlement and the liability of the flagellation arrives at the time he threshes with her when she is muzzled (B. M. 91).

5. When an Israelite threshes with a muzzled cow which belongs to a Heathen then he violates the command. When a Heathen threshes with a muzzled cow which belongs to an Israelite then he does not violate the command (B. M. 90).

6. When A commands the Heathen to muzzle his cow, and thresh with her or a splinter of wood gets in her mouth and thus preventing her from eating or he places a lion in front of her, so as to frighten her or he places her calf in front of her or she was thirsty for drink and he refused to give her or he covered his produce with a cover so as to hinder her from eating then for all the above cases he is forbidden, but he cannot be punished by flagellation (L. C.).

7. When the fruit among which the cow worketh will make her ill by eating it or she was sick before and she is forbidden by the doctor to eat, then it is permitted to muzzle and thresh with her because it is in her favor (L. C.).

8. When a cow passes over the fruit to make the way shorter then it is permitted to muzzle her (L. C.).

9. It is permitted for the hirer to feed the cow before the work with straw, so that she shall not eat much fruit and it is permitted to the owner of the cow to hunger her before she go to work so that she shall eat much of the fruit (L. C.).

### CHAPTER 339.

There shall not abide with thee the wages of him that is hired from night till morning (Leviticus, Chapters 19-13).

1. Thou shalt not withhold the wages of a hired man of the poor and needy. On the same day shalt thou give him his wages that the sun may not go down upon it; for he is poor, and his soul longeth for it; so that he may not cry against thee unto the Lord, and it be sin in thee (Deuteronomy 24).

2. It is a commandment to pay the laborer his wages at the proper time and if the employer postpones payment to a future time then he violates a commandment. This law includes the wages of a man or animal or vessel. But as to the wages of earth then it is an opinion that he does not violate the commandment if the payment is delayed. But as to rent of a house there are two opinions. Some hold that it must be paid at the time proper, if

it is delayed he violated the commandment and others hold that there is no violation (B. M. 111).

3. Each one who withholds the wages of a laborer is considered as a murderer and violates five negatives and one positive commandment (L. C.).

4. He who hires a laborer for work during the day has time to pay him until the following sunrise, otherwise he violates the commandment. He who hires a laborer to work at night, then he has time to pay him until sunset of the following day, otherwise he violates the commandment.

5. When the laborer is hired by the hour. When the work is completed in the day he has time until the night and when the work is completed in the night he has time to pay until the sun rise (L. C.).

6. When the laborer was hired by the week or by the month or year then it depends upon the completion. If it is completed during the night then he has time to pay until sunrise. If the work is completed during the day then he has the right to pay until sunset (L. C.).

7. When A gives his coat to a tailor to repair and he is hired to be paid by the end of the job, and he completes it as aforesaid then so long as the coat is in possession of the laborer then A does not violate the commandment. When he deliver the coat even in half day he must pay before sunset, if he delays after sunset then he violates the command. Because the laborer

is considered as an employee and must receive pay at the proper time (B. M. 112).

8. When A instructed his agent to hire laborers and the agent hired it and said to them, your wages will be paid by A then no one of them is liable for the command when the wages are delayed the agent because it is not his work and A; because he did not hire them (L. C.).

9. If however the agent does not say to them, your wages will be paid by A, then even if he does not say that your wages will be paid by me but he hired them without specifying then the agent is bound to pay them and therefore he is liable for the commandment (L. C.).

10. When the laborer knows that the work does not belong to the agent then A is is not liable for the command (Ramo).

11. When A hires a laborer and he knows that A's times for payment is on a certain day in the week until he will have sufficient funds then A does not violate the commandment. But after the certain day then if the payment remains unpaid then A violates the command (L. C. 111).

12. When the laborer does not request his wages or did request and the employer said that he had no money or he transferred the laborer's wages to the banker to pay for him and they were satisfied, then



the employer does not violate the commandment (L. C.).

13. The laborer has the right to withdraw from the transfer to the banker and demand his wages from A, except when there was a form of agreement made (Kinion) then no one can withdraw (Tur).

## CHAPTER 340.

### הלכות שאלה

#### LAW OF BORROWER

1. When A borrows from B a cow or other personal property and it is stolen or lost or an accident happened to it, e. g., died or broke its leg the borrower is bound to pay for it. But every damage which has happened on account the work which for it was borrowed, e. g., she became lame and even died, the borrower is not liable (B. M. 93).

2. If however the borrower changed the work and worked with the cow at a different sort of work upon which it was not agreed at the time of the transaction, and even if this work is milder, he is bound to pay for the damages because perhaps account of this work the accident happened. And even in the same work when he worked with her during day and night, not according to the custom of the locality, he is bound to pay for the damages (L. C. 96).

3. If the flesh of the cow becomes lean from itself

and this will heal then he is not liable. If however she becomes lean from itself, and she died afterwards then he is bound to pay according to the estimated value at the time when he borrowed her (Tur).

4. A borrowed an animal from B to go to a certain place and on the way bandits or wild beasts captured it there are two opinions whether or not he is liable to pay (Tur).

5. A borrowed a cat to catch rats and the rats killed her or she overeat with the rats and she died A is not liable (B. M. 97).

6. The borrower is bound to support the animal at the time he made the settlement (Meshica) until the end of the time was borrower's.

7. A borrows a cow from B and B sent her to him with his son or with his slave or with his agent, and even if B sent her with the son or the agent of A, and she died before she arrived to the possession of A he is not liable (B. M. 98).

8. If however A commands to B he shall send it through his son or through his agent or through your son and agent and she died before she arrived in the possession of A then he is bound to pay for her (L. C.).

9. If A ordered B that he shall smite her with a stick and she will come itself and B does so A is not responsible for her damage until she arrived in his possession (L. C.).

10. The same rule applies when A returns her through his agent and she died on the way A is bound to pay except when it was returned with the order of B, then A is free (B. M. 81).

### CHAPTER 341.

1. A borrows from B a vessel or a cow without specifying the time then B is permitted to demand the same article to be returned to him at any time he wishes. If however it was borrowed for a certain time and a form of agreement was made (Kinion) B cannot withdraw and cannot demand his article shall be returned until the certain time is due and even if the borrower died then the heirs can use the article until the time is due (Kesuboth 34; B. K. 112).

2. A borrowed a cow from B for a certain length of time and in the meantime A died, then his heirs can use the same until the time has elapsed; but the heirs are not considered as borrowers but as compensation guardians and they are not responsible for accidents even they use the cow only when it is stolen or lost, even if they did not use the cow they are liable. It is an opinion that B can say to the heirs, either return to me the cow or assume the responsibility even for accident (Tur).

3. If the heirs thought that the cow belonged to the father and they slaughtered and ate her then they

must pay to the borrower two-thirds of its value, e. g. When the flesh of the cow was worth six denarim then they must pay only four denarim for the flesh, and the skin must be returned to B, but when their father left them an estate, they must pay the entire value even for the flesh (B. K. 112).

4. When A borrows a vessel from B to do with her a certain work and A made a settlement in her (Meshica) then B cannot withdraw until A will do the certain work, and the same rule applies when A borrows a horse to go to a certain place and A made a settlement in her (Meshica) then B cannot withdraw and cannot recover his horse until A will go to the certain place (B. M. 99).

5. When A says to B loan me the shovel to dig the vineyard then he is permitted to dig only this vineyard and he is forbidden to dig a different vineyard even though it be of the same size. If however A says loan me the shovel to dig a vineyard, then he is permitted to dig any vineyard even though the vineyard does not belong to him (L. C.).

## CHAPTER 342.

1. It is forbidden for the borrower to lend the article to another, even by a case of the Five Scrolls of Law which it is a command to loan them to anyone so that he may learn, then he is forbidden to lend them



to others and if he lend it they became spoiled on account of excessive use, then he is liable, except when he can prove that the other kept them in a good condition and the same catastrophe would have happened in his possession (See Code 3, Chap. 291; B. M. 29).

2. If the article is of such a nature which cannot be denied or seized, e. g., a ship, or a house, then it is permitted to loan her to another (Ramo).

### CHAPTER 343.

1. When A borrows an article from B for a certain time and when the time has elapsed and the article is not returned then A is considered as compensation guardian and he is liable only when it is stolen or lost; and the same rule applies when a compensation guardian has completed his time to guard the article and when the same is not returned to the bailor then he is considered to the article like a guardian without compensation (B. M. 81).

### CHAPTER 344.

1. If the borrower claims that the cow died on account of the work and he is therefore not liable for payment, if it was in a place where it is possible to prove with witnesses his innocence then the borrower must do so. If it is in such a place where it is impossible to

substantiate his claim with witnesses then he must take an oath that it so happened and he is free (see Chap. 294, Code 5; B. M. 83).

2. If the borrower makes a condition at the time of the receiving of the article that he shall not be liable either for an oath or for payment, if the article happens to be stolen, lost, involved in an accident, then the same must be fulfilled (L. C. 94).

3. When the borrower is bound to pay for the cow the value of the dead body must be estimated and it must be given to the lender and the borrower shall pay the difference; if it becomes decreased between the time of the damages till the time of the trial, then it must be paid according to its value at the time when she was dead (B. M. 97; B. K. 11).

4. A lends an article to B, and it becomees destroyed and B says, swear how much it was worth and I will pay and A says to B swear you and be free, then A must take an oath and B must pay. If A refuses to swear then B need not to pay (Tur).

5. A borrows a cow from B for a half a day and hires her for the other half day or borrows for one day and hires her for the other day, or one cow was borrowed and the other was hired, and one died and B claims that the one borrowed died or at the time when she was borrowed she died and you are bound to pay for my risk and A says he is uncertain, or they both uncertain, when it happened it must be decided in favor

of the possessor and the recoverer must bring evidence to recover from the possessor; if he fail to bring witness, when B claims positive then A must swear that the hired one has died, or he does not know and he is free and when B's claim is a doubt A must swear, the guardian oath that the cow died by nature and additionally he must swear that the hired one is died or he is uncertain and he is free and the same rule applies when B claims that the one which was borrowed died, and A claims the hired one had died or that both are uncertain (L. C.).

### CHAPTER 345.

1. A borrows two cows from B for a half day and hired them for the other half day and they both died, B claims that at the time of the borrowing they both died and you bound to pay for it, and A claims that one died at the time of the borrowing and the other I am uncertain when she died either at the time of hiring or at the time of the borrowing, because A admitted a part of the claim and he is bound to swear and he can not swear because he is uncertain, therefore he must pay (see Code 1, Chap. 75, Par. 17; B. M. 98).

2. And the same rule prevails when A borrows three cows from B, two as borrowed and one as hired, and two die, and B claims that the borrowed two has

died and you are bound to pay me, A says that it is possible that the borrowed one has died, but I am uncertain, perhaps the hired one has died then A is bound to swear and if he cannot then he must pay (L. C.).

### CHAPTER 346.

But if the owner thereof be with it he shall not make it good if it be a hired thing the loss is included in its hiring (Exodus, Chap. 22, Par. 14).

This rule is based on the following chapter.

1. A borrows a cow from B and the latter was with A when he replied, the borrowed cow even this was stolen or lost on account of negligence then he is free, because it is written when the owner is with the borrower he shall not pay either if he was with him at the time of the borrowing, e. g., he loaned himself to A to do the work or he hired himself to him either in the same sort of work or other kind of work, even if A says to B fetch me a drink of water and in the same time he borrowed from him a cow, then it is considered that the owner is in his service and if a damage happened or risk befell the cow he is not liable (B. M. 97).

2. If however the service of the owner begins after the repleading of the borrower it is not considered that the owner is in his service and he is liable (L. C.).

3. The service of the owner either it started at the time of the borrowing or before, then it is considered



as legal, if the borrowing starts before and the service of the owner starts afterwards, then even if he was present at the time of the accident the borrower is liable to pay because it is not considered as owner in his service (L. C. 95).

4. A requested B to do service for him and he was satisfied to fulfill the same even if he did not begin the work at the time of the repleading the cow, but at the time has made himself ready to attend to his duties alone then it is considered as owner in the services, but by promise alone cannot be considered as owner service (Tur).

5. A hired or borrowed a cow from B to carry a load and B went with her to assist and to unload her, even if he does it by his own will it is considered as owner service and A is not liable for any risk; but when B goes only to see that A shall not add too much of a load on his cow then this is not considered as owner service (B. M. 96).

6. When A borrows a cow from B and the latter orders his agent he shall assist A in the work with the cow, if it is considered as owner service or not there are two opinions (L C. 97).

7. When one partner borrows an article from the other even not for his own use it is considered as owner service (L. C.).

8. When A says to B lend me the article today

and I will lend you another article tomorrow then this is not considered as owner service (Tur).

9. When A borrows a cow from a married woman from her unguaranteed property and her husband is in service to the borrower or the woman borrows a cow for the use of her unguaranteed property and the owner of the cow is in the service of her husband then it is not considered as owner service because in this property he is only entitled to the use of the fruit and that cannot be considered as like the possession of the ground (L. C. 96).

10. A borrows a cow from two partners and one of them is in A's service, or two partners borrow a cow and the owner is in service of one of them, this is a doubt in law; if it is considered as owner service or not and therefore if the cow died he is not bound to pay and if the owner seized the value of the cow from the borrower, it cannot be recovered from him. If the cow died by negligence it is two opinions if the borrower is bound to pay or not (Tur; L. C.).

11. A teacher or, who plants trees for the city or a doctor or a scribe which is appointed as city clerk, on the day when they are in the service of the community if one borrows from them a cow, and she died even by negligence it is considered as owner in service and they are not liable. If the above borrows a cow from one of the citizens and she dies they are liable because the

members of the city are not in the service of the above (L. C. 96).

12. It is an opinion that at the time when they were engaged in the work of the city even they did not do the work but they cannot resume this work and even though they received wages for the work it is considered as owner in service and therefore when one of the members borrowed a cow from them and she died he is not liable (Tur).

13. A Rabbi who teaches the scholars, and they must listen to him to learn the subjects which he decides as necessary then the scholars are considered as owner in service; and when the Rabbi borrows a cow from one of them and she dies the Rabbi is not liable (B. M. 97).

14. If however the Rabbi is instructed by the scholars to teach them the subjects which they wish, then the Rabbi is considered as in owner service to the scholars and if one of the scholars borrows a cow from the Rabbi and she dies he is not liable because the Rabbi is in his service, even at the time when they rest, if it is depend upon both of them, the Rabbi is complete to learn the subjects which they started and the Rabbi has no right to change the subjects without the consent of the scholars, and the scholars cannot start to learn other subjects without the consent of the Rabbi then both are not considered as owner service (L.C. 97).

15. Before the hoidays when the Rabbi is obliged

to lecture to the community the law of holidays then if one of the members borrows a cow from the Rabbi and she died he is free. If the Rabbi borrows a cow of one of the members he is bound to pay because the members are not in his service. A cantor at the time when he attends the services; when he borrows from one of the community a cow or one of them borrows from him and an accident happens to the same, they both are not liable because they are both in service of each other (Ramo).

16. When A borrows a cow and the owner was in service, and the same cow he hired afterward and the owner was not in the service, then if an accident happens, even at the time of the hiring, he is not liable, because the hiring depended upon the borrowing and it is considered as the hiring was also with the owner service (B. M. 98).

17. If at the time of the hiring the owner was in service, and afterwards he borrowed her when the owner was not in service, or at the time of the borrowing the owner was in service and afterwards he hired her when the owner was not in service, or hired her when the owner was in service and he borrowed her when the owner was not in service and hired her when the owner was not in service. Then the above cases are doubtful in law and the decision is possession (L. C.).

18. It is an opinion when A hires the cow and the



owner was in his service and afterwards he hired her when the owner was not in his service it is considered as the owner was in service and if an accident happened to the cow he is not liable.

20. However if the first hiring was when the owner was not in service and the other hiring was when the owner was in service the first one cannot make the other she shall be as the owner is not in service, and the hirer is not liable when an accident is happened after the second hiring (Tur).

21. The husband in the property of his wife which is unguaranteed by him even though he was neglected and the same becomes lost he is not liable because the wife is in his services (L. C. 76).

22. A woman borrowed an article for a certain length of time and afterwards she married, the husband is considered as buyer and not as guardian; therefore if the article was a cow and she died even on account of negligence the husband is not liable although he used it the same certain time, because he is considered as a buyer, and a judgment must be given to the borrower in the name of the woman and when she will be divorced or become a widow the plaintiff will be able to collect from her (L. C.).

23. If she notifies her husband that the cow is borrowed, he is liable to pay for it and the husband cannot be free on account of his wife's service because the cow did not belong to her (Tur).

24. A bought a cow for a period of thirty days, he is considered as guardian without compensation.

25. The law of owner service prevails by all guardians.

### CHAPTER 347.

1. A borrows an ox from B and A's ox gored the ox of B either the ox gores the first time or the third time. A must pay all the damage because even when he was damaged by others he must be liable for all damages just the the same he must now pay. If however he made a condition that he should assume the responsibility to guard against that sort of an incident; but not shall he himself be damaged and A's ox gores the ox of B the first and second time of the goring he must pay one-half damages, but by the fourth time he must pay all the damages.

2. When the ox of B gores the ox of A either the first time or the third time B is not liable. If the ox gores an outside ox A must pay for it (B. K. 13).

3. If it was conditioned upon the responsibility to guard that he shall not become damaged by another, but not to guard against his damaging the other then B must pay if it happened the first time and the second only a half of the damage and if it happens the fourth time he must pay the entire value.

הרי שאבדו או נגנבו לו גדייו ותרנוגוליו והלך ומצאן שחוטין מותר משום שחיטה (ב"מ כ"ד).

אמר ר' יוחנן לא חרבה ירושלים אלה שהעמידו דיניהם על דין תורה ולא עבדו לפנים משורת הדין (ב"מ ל').

האשה שיצאה ליהרג אין ממתינין לה עד שתלד, ישבה על המשבר ממתינין לה עד שתלד ופירש"י קודם שנגמר דינה, והתוס' פירשו אפילו לאחר שנגמר דינה ממתינין הואיל וישבה על המשבר (ערכין ז').  
אמר רב נחמן אמר שמואל האשה שישבה על המשבר ומתה בשבת מביאין סכין ומקרעין את כריסה ומוציאין את הולד (ערכין ז').  
היוצא ליהרג שהזיק ת"ק סבר אם הזיק אינו חייב בתשלומין ור' יוסי סבר אם הזיק חייב לשלם (ערכין ו').

החופר בור ברה"ר ונפל עליו שור והרגו פטור, ולא עוד אלה שאם מת השור יורשי בעל הבור חייבין לשלם דמי שור לבעליו (ערכין ז').

השוכר פרה מחבירו והשאילה לאחר ומתה כדרכה ישבע השוכר שמתה כדרכה והשואל משלם לשוכר, אמר ר' יוסי כיצד הלה עושה סחורה בפרתו של חבירו אלה תחזור פרה לבעלים (ב"מ ל"ה, ח"מ רצ"ב).

תני ר' היא מנה לי בידך והלה אומר אין לך בידי כלום והעדים מעידים שיש בידו חמשים זוז נותן לו חמשים וישבע על השאר שלא תהא העדאת פיו גדולה מהעדאת עדים (ב"מ ג' ח"מ ס' ע"ה).

אמר ר' היא מנה לי בידך אין לך בידך אלה חמשים והילך, חייב, רב ששת אמר הילך פטור מ"ט כיון דאמר הילך הנך זוזי דקא מודי בגוייהו כמאן דנקט מלוה דמי באינך חמשים הא לא מודי הלכך ליכא הודאת מקצת הטענה (ב"מ ד' ח"מ ס' ע"ה סעי' ו').

מנה לי בידך אין לך בידי פטור ואמר רב נחמן משביעין אותו שבועת היסת (ב"מ ה' ח"מ ס' ע"ה סעי' ז').

שנים אדוקים בטלית זה נוטל עד שידו מגעת וזה נוטל עד שידו מגעת והשאר חולקין (ב"מ ז' ח"מ ס' קל"ח).

הי' מהלך בספינה וקפצו דגים ונפלו לתוך הספינה הרי אלו של בעל הספינה (ב"מ ט' ח"מ ס' שע"ג).

המגביה מציאה לחבירו קנה חבירו (ב"מ י' ח"מ רס"ט).

תופס לבעל חוב במקום שחב לאחרים לא קנה (ב"מ י' ח"מ ק"ה).

פועל יכול לחזור בו אפילו בחצי היום (ב"מ י' ח"מ של"א).

ראה את המציאה ונפל עליה ובא אחר והחזיק בה זה שהחזיק

בה זכה בה (ב"מ י' ח"מ ס' רס"ט).

ד אמות של אדם קונת לו בכל מקום (ב"מ י' ח"מ ס' רס"ט).

אין שליח לדבר עבירה (ב"מ י' ח"מ קפ"ב).

מציאת פועל לעצמו כמה דברים אמורים בזמן שאמר לו נכש

עמי היום עדור עמי היום אבל אם אמר לו עשה עמי מלאכה היום,

מציאתו לבעל הבית (ב"מ י"ב ח"מ ס' ר"ע).

אמר רבא הלכתא יש לו מעות ויש לו שבח ואע"פ שלא פירש לו

את השבח, הכיר בה שאינה שלו ולקחה, מעות יש לו שבח אין לו.

אחריות טעות סופר היא בין בשטרי הלואה בין בשטרי מקח

וממכר (ב"מ י"ד, ח"מ ס' קט"ו שע"ג).

יאוש שלא מדעת אביו אמר לא הוי יאוש, רבא אמר הוי יאוש

(ב"מ כ"א ח"מ רס"ב) והלכתא כוותיה דאביו ביע"ל קג"ס (ב"מ כ"ב).



## SUPPLEMENT TO CODE IV.

### CHAPTER XXXIX

1. If one betrothed a woman on condition that she shall not have made vow and afterward it is found that she made a vow, if it is from the kind that she shall not eat meat or not drink wine, no powder herself, no wear ornaments, she does not become betrothed and even a divorce is not necessary (Kesuboth 72). If it is not this kind of vow, even the husband say that he is against this vow, the betrothal take effect. If, however, he say to the woman on condition you shall no have no vow, then the betrothal takes no effect.

2. If she has made a vow, but she went to the clergyman before the bridegroom was aware of it, and the clergyman absolved her from the vow, then she is betrothed (L. c. 74).

3. If a man betroths a woman on condition that she shall have no defects and afterward it is found that she has even one defect, like a bad breath, or a wart which is not visible, then she does not become betrothed (L. c.).

4. If it was not specified at the time of the betrothal about the defects and it is found that she has the same defects enumerated above, or it is found that she makes a vow which any husband is against, the betrothal is doubtful.

5. If a man makes a condition with the woman that

she shall have no defects and she has same, but she went to the doctor and recovers, she is not betrothed (L. c.).

6. If, however, the woman makes a condition with the man that he shall have no defects, and he has some and went to a doctor and recovers, the betrothal takes effect, because there is no shame for a man who had defects and recovered from it, but for a woman it is a shame if she had defects, even she recovered afterward.

## CHAPTER XL.

1. If a man say to a woman, "You are betrothed to me with this coin after thirty days," and she receives the money and was satisfied, the betrothal takes effect after the thirty days is expired, even if the money was spent in the meantime (Kidushin 58).

2. It is permitted that either the man or the woman may retract from the betrothal within the thirty days. If she retracts she must return the betrothed money, if he retract it is two opinions if the betrothed money must be returned or not (L. c.).

3. If before the thirty days expires a second man betroths her at once with coin, then she is betrothed to the second, because until the thirty days elapsed she did not belong to the first one, and when the thirty days expired she is a married woman; therefore, the consideration of the first man cannot be valid, because a married woman cannot be betrothed. (She must return the betroth money to the first one.)

4. If the second man dies before the expiration of the thirty days, there are two judicial opinions as to whether the first betrothal takes effect or not (L. c.).

5. If a man say to a pregnant woman's husband, "If your wife bears a girl she shall be betrothed to me," and she bears a girl, this betrothal is not effective, because a man cannot bargain with something that does not exist in the world, but Mamemmidies holds that if the woman was so pregnant that her condition was clearly visible, the betrothal can take effect, but he must again betrothal her when she becomes of age (Kidushin 70).

6. If a man says to a married woman, "Take this coin and you will be betrothed to me after your husband divorces you," or he says to a woman who is his wife's sister, "You are betrothed to me with the coin after my wife dies," the betrothal takes no effect, because he is unable to betroth her at once (L. c. 62).

## CHAPTER XLI.

1. One man can betroth several women at same time and one of them can act as agent to receive the betrothal for all with one coin, but it must not be less than one peruto (one cent U. S.) for each one (Kidushin 50).

2. If one man betroths two women at one time and one of them was one of those forbidden to him, for example, the two women were mother and daughter, or two sisters, neither one of them becomes betrothed to him (L. c.).

In the name of the holy sages I express thanks and appreciation to all who have assisted me in spreading this edition over the world and those whose names are mentioned here or not they all shall be blessed with long lives health and wealth.

## THE AUTHOR.

### A

Alterug, J.  
American European Jes-  
hurn Book Co.  
Adler, Philip

### B

Bachrach, Clarence G.  
Bains, Wm. M., Phila., Pa.  
Bloch Pub. Co.  
Bernstein, Louis  
Brady, James A.  
Brin, Solmon  
Brooklyn Jewish Center  
Brooklyn Law School

### C

City Clerk, N. Y.  
Cohen, Adolph  
Colleges: Harvard, Yale,  
Columbia, Princeton, Rut-  
gers  
Courts: Of Appeal, New  
York, Rochester, King-  
ston, Utica, Syracuse,  
Buffalo, Baltimore, Phila-  
delphia.

### D

Deutsch, Edward  
Delman, David L.  
Druckerman's

### E

Ebin, Rev. Dr. H. H.  
Eisler, Benjamin  
Eitingon Schild Co.  
Elenbogen, A. E.

### F

Fertel, H. D.  
Flam, Adolph  
Fine, Lewis J.  
Fishel, Harry  
Fox, J.  
Fox, H. G.  
Friedman, Samuel  
Friedman, Dr. J. H.  
Frank, Samuel

### G

Gabriel, Olive Stott  
Greenburg, Emanuel  
Geist, Alexander  
Gerber, N.  
Goldberg Bro.  
Goodman, A. H.  
Gainsburg, M. L.  
Gelberg, Samuel S.  
Gerlich, Chas. J., Jr.

### H

Harris, Murray A.  
Harrison, David  
Herbst, J. H.  
Haber, Isidore I.  
Herskovitz, Albert & Son  
Harris, Louis S.  
Horowitz, Harry L.  
Huxpord, Spelke

### I

Iselin, William



## J

Jacobs, Israel J.  
Jewish Publication Society,  
Philadelphia, Pa.  
Jacobs, William

## K

Kaplan, Max  
Kirsh, B. S.  
Konigsberg, H.

## L

Lichtenstein & Lichtenstein  
Libraries, State:  
New York, New Jersey,  
Vermont, Connecticut,  
Michigan, Montana, Cali-  
fornia, Massachusetts  
Levin, Albert A.  
Levin, David S.

## M

MacMahon, Hon. J. Grattan  
Mochi, Ephriam Simon,  
Bagdad, Mesopotamia  
Meyerson, Egert, Co.  
Miller, George G.  
Marcus, Samuel L.

## N

New Rochelle High School  
Netter & Netter

## O

Orenstein, Henry  
Podell, D. L.

## R

Rabinowitz, Jacob  
Rabinowitz, A.  
Rosen, Bro.  
Roemer, Chas. H.  
Rose, Marice  
Ranzenhofer, Joseph L.  
Roth, Harry  
Reznick, Menschel Co.  
Roth, G.

## S

Sadowsky, W.  
Samuel, Hon. Herbert  
Jerusalem, Palestine  
Silverman, Samuel  
Seidman & Seidman  
Shapiro, Philip D.  
Schatz, Charles  
Siet, Benjamin  
Sacher, Harold  
Schonfield, H.  
Simons, H. L.  
Stone, H., Dean of Colum-  
bia Law School  
Speiser, Hon. Maurice J.  
Sherr & Gross  
Silverstein, Max  
Schriber, Benjamin  
Schnider, Wm.  
Stern, Jessi Laton

## T

Taft, Hon. William H.  
Tapper, George F.

## U

Universities: Syracuse,  
Rochester, New York,  
Philadelphia, Balti-  
more, Washington,  
California, Seattle.

## W

Wahle & Kringel  
Weeks, F. E.  
Weiss & Zimerman  
Weinblatt, Chas.  
Wisoff, Myron  
Y  
Young Women's Hebrew  
Assn.

## Z

Zoline, Elijah N.

I have examined the proposed work of Rabbi Kadushin and am glad that a proper presentation is at last made to place the law with the original sources. Rabbi Kadushin deserves encouragement and I am sure he will receive it.

(Signed) A. PEREIRA MENDES,  
Rabbi of Congregation Scharis Israel.

This edition for sale by all book dealers in the U. S.  
and foreign countries and by the author,

Rabbi J. L. Kadushin

15 Euclid Place, New Rochelle, N. Y.

Price \$4.00 per copy.







246955

Law

Author Kadushin, Jacob Louis

For

Kllj

Title Jewish code of jurisprudence.

pts.5 & 6.

DATE.

NAME OF BORROWER.

University of Toronto  
Library

DO NOT  
REMOVE  
THE  
CARD  
FROM  
THIS  
POCKET

Acme Library Card Pocket  
Under Pat. "Ref. Index File"  
Made by LIBRARY BUREAU

